



City of Busselton
Geographe Bay

Policy and Legislation Committee Agenda

20 July 2017

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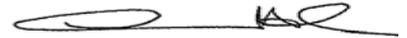
CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 20 JULY 2017

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the Council Committee Room on Thursday, 20 July 2017, commencing at 11.30am.

The attendance of Committee Members is respectfully requested.



MIKE ARCHER

CHIEF EXECUTIVE OFFICER

14 July 2017

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 20 JULY 2017

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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 OF MINUTES**

5.1 **Minutes of the Policy and Legislation Committee Meeting held 15 June 2017**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 15 June 2017 be confirmed as a true and correct record.

6. REPORTS

6.1 STATUTORY REVIEW OF DELEGATIONS

SUBJECT INDEX:	Authorised Delegation of Power/Authority
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Finance and Corporate Services
ACTIVITY UNIT:	Governance Services
REPORTING OFFICER:	Executive Assistant - Christine Garratt
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A Revised Delegation LG3J Inviting and Awarding Tenders showing proposed tracking changes ↓
	Attachment B Revised Delegation LG3J Inviting and Awarding Tenders ↓
	Attachment C Revised Delegation LG6A Payments from Municipal Fund or Trust Fund showing proposed tracking changes ↓
	Attachment D Revised Delegation LG6A Payments from Municipal Fund or Trust Fund ↓
	Attachment E Revised Delegation LG6C Rates and Service Charges showing proposed tracking changes ↓
	Attachment F Revised Delegation LG6C Rates and Service Charges ↓
	Attachment G Revised Delegation DA1 Appointment of Authorised Persons and Registration Officers showing proposed tracking changes ↓
	Attachment H Revised Delegation DA1 Appointment of Authorised Persons and Registration Officers ↓
	Attachment I Existing Delegation LG6E Payments from Sponsorship and Donations Fund ↓

PRÉCIS

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

BACKGROUND

Council has the ability to delegate the exercise of powers and discharge of duties to its Chief Executive Officer. These delegations are required to be reviewed by the delegator (in this case the Council) at least once in every financial year.

STATUTORY ENVIRONMENT

Section 5.42 of the *Local Government Act 1995* 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 the Council.

The delegations must be contained in a Register. Wherever a decision has been made under delegated authority, records of the decision must be kept in accordance with the *Local Government (Administration) Regulations 1996*.

Section 44 of the *Cat Act 2011* provides the power for Council to delegate the exercise of its functions and discharge of its duties to the CEO. Section 47(2) of that Act requires the delegator to review delegations at least once every financial year.

Section 10AA of the *Dog Act 1976* provides Council with the ability to delegate powers and duties to its CEO. In accordance with Section 10AB(2) of that Act, the delegations must be reviewed at least once every financial year.

RELEVANT PLANS AND POLICIES

The Department of Local Government and Communities Operational Guidelines Number 17 - 'Delegations'

Local Government (Administration) Regulations 1996

FINANCIAL IMPLICATIONS

There are no financial implications involved in reviewing Delegations, however, utilisation of delegated authority creates organisational efficiencies. Without a system of delegated authority in place, a significant number of day-to-day local government decisions would need to be referred to Council as agenda reports. Having an effective delegated authority system in place reduces the turnaround time for some matters which allows for the Council to use its time to undertake its more strategic role.

Long-term Financial Plan Implications

There are no direct Long Term Financial Plan implications associated with this review.

STRATEGIC COMMUNITY OBJECTIVES

This statutory delegation review aligns with and supports the **Council's Key Goal Area 6** – 'Leadership' and more specifically **Community Objective 6.2** – 'Governance systems, process and practices are responsible, ethical and transparent'.

RISK ASSESSMENT

Not required for a review undertaken in accordance with statutory requirements.

CONSULTATION

The current delegations were developed with reference to the Department of Local Government and Communities Operational Guidelines Number 17 – 'Delegations'.

OFFICER COMMENT

There are a range of powers and duties delegated to the CEO in accordance with the powers provided by Sections 5.42(1)(a) and (b) of the *Local Government Act 1995*. These are largely recommended to continue unchanged, with the exception of proposed updates as identified in the table below. The table provides an overview of the current delegations and an explanation of the powers exercised by the CEO. Minor amendments are proposed to delegations LG3J, LG6A, LG6C, and DA1. Officers are also recommending revocation of delegation LG6E.

Delegations to the CEO

Description		Purpose
LG3A	<p>Legislative Function</p> <p>To determine applications received by the City in accordance with a Local Law made by the City in accordance with Subdivision 2 of Division 2 of Part 3 of the <i>Local Government Act 1995</i> and to enforce the provisions of those local laws and to otherwise exercise the powers and discharge the duties of the local government under those local laws.</p>	<p>Enables the CEO to determine applications in accordance with the relevant provisions of the Local Law and the ability to enforce the provisions of those local laws.</p> <p><i>No change proposed.</i></p>
LG3D	<p>Notices Requiring Things to be Done</p> <p>To exercise the powers and discharge the duties of the local government under Section 3.25(1), 3.26(2) and 3.26(3).</p>	<p>This provides for the ability to require actions from an owner or occupier relating to unsightly land, overgrown vegetation, rubbish etc.</p> <p><i>No change proposed.</i></p>
LG3E	<p>General Procedure for Entering Property</p> <p>To authorise persons on behalf of the local government for the purposes of discharging the duties under Section 3.31(2).</p>	<p>A person requires authorisation in order to enter property. This enables the CEO to authorise others instead of requiring Council approval.</p> <p><i>No change proposed.</i></p>
LG3F	<p>Power to Remove and Impound</p> <p>To authorise employees on behalf of the local government for the purposes of discharging the duties under Section 3.39 and 3.40A(1).</p>	<p>A person requires authorisation in order to impound vehicles etc. This enables the CEO to authorise others instead of requiring Council approval.</p> <p><i>No change proposed.</i></p>
LG3G	<p>Disposing of Uncollected Goods</p> <p>To exercise the powers and discharge the duties of the local government under Section 3.47(2) and 3.47(2a).</p>	<p>Enables the CEO to dispose of impounded goods when not collected in a specified time, including vehicles.</p> <p><i>No change proposed.</i></p>
LG3H	<p>Thoroughfare Closure</p> <p>To exercise the powers and discharge the duties of the local government under Section 3.50(1), 3.50(1a), 3.50(4), 3.50(6) and 3.50A.</p>	<p>Enables the CEO to require the closure of roads.</p> <p><i>No change proposed.</i></p>
LG3J	<p>Inviting and Awarding Tenders</p> <p>To exercise the powers and discharge the duties of the Local Government under Regulations 11, 14 and 18 to publicly invite tenders by determining the written criteria for deciding which tender should be accepted.</p> <p><i>(Attachment A)</i></p>	<p>Enables the CEO to invite and evaluate tenders prior to entering into a contract of a prescribed kind under which another person is to supply goods or services to the Council. Also provides the CEO with the ability to award tenders not exceeding a contract value of \$500,000.</p>

	<p>These delegations are currently subject to the following conditions:</p> <ul style="list-style-type: none"> (a) Utilising the standard selection criteria as per Policy 031; (b) Following the City's operational practice utilising tender evaluation processes and documentation developed by WALGA; (c) Compliance with the requirements of the City's Purchasing Policy as it relates to tendering; and (d) Acceptance of a tender is not to exceed a contract value of \$500,000. 	<p><u>Summary of proposed updates:</u></p> <p>Inclusion of specific reference to various other administrative functions associated with the tender process by way of including reference to Regulations 20 and 21A. Regulation 20 enables the CEO to vary requirements prior to entering into a contract with the chosen tenderer, Regulation 21A enables the CEO to vary a contract for the supply of goods and services.</p> <p>It is also proposed that condition (b) is reworded to require from the CEO to follow the City's internal operational processes and procedures for the purposes of tender evaluation, this condition as it stands now requires the CEO to use documentation developed by WALGA. It is further proposed that conditions (b) and (c) are reversed in order to reference the City's Purchasing Policy as the initial reference document, followed by operational processes and procedures.</p> <p><i>(Attachment B)</i></p>
LG 3K	<p>Acquiring and Disposing of Property</p> <p>To exercise the powers and discharge the duties of the local government under Sections 3.58(2) and 3.58(3) and acquire property on the local government's behalf. The value of the property shall not exceed \$100,000.</p>	<p>This delegation has been excluded from this report as it was listed under separate cover on Council Agenda of 28 June 2017 with the Officer Recommendation subsequently adopted (C1706/151).</p> <p><i>No change proposed.</i></p>
LG3L	<p>Airport Redevelopment Project - Inviting Tenders and Awarding Tenders</p> <p>To publicly invite tenders by determining the written criteria for deciding which tender should be accepted and to award tenders with a contract value up to \$1,000,000 subject to agreement from the CEO of the South West Development Commission (SWDC).</p>	<p>Due to the nature and scope of the Airport Redevelopment Project a specific tender delegation has been put in place which is required to be exercised in accordance with agreement from the CEO of the South West Development Commission (SWDC).</p> <p><i>No change proposed.</i></p>

LG3M	<p>Establishment of Panels of Pre-Qualified Suppliers</p> <p>To exercise the powers and discharge the duties of the local government under Part 4 Division 3 of the <i>Local Government (Functions and General) Regulations 1996</i> pursuant to Regulation 24AC(1)(b) to determine whether there is, or will be, a continuing need for the particular goods or services to be supplied by pre-qualified suppliers and in accordance with Regulations 24AD – 24AI establish panels of pre-qualified suppliers for provision of particular goods or services and in accordance with Regulation 24AJ enter into a contract, or contracts, for the supply of goods or services with a pre-qualified supplier who is part of a panel of pre-qualified suppliers for the supply of those particular goods or services.</p>	<p>Enables the CEO to establish panels of pre-qualified suppliers in accordance with the relevant provisions of the Tender Regulations and the Council’s “Purchasing” Policy which in turn assists in streamlining Council operations and improving efficiency without compromising statutory or policy compliance or Council’s existing powers in relation to choice of tenderer.</p> <p>No change proposed.</p>
LG5A	<p>Provision of Urgent Legal Services</p> <p>To provide authorisation in accordance with Clause 3.10 of Council Policy 085 “Legal Representation for Council Members and Employees” for urgent legal services to a maximum value of \$10,000.</p>	<p>Enables the CEO to exercise, on behalf of the Council, the powers of the Council under Clause 3.8 of Council Policy “Legal Representation for Council Members and Employees” to a maximum of \$10,000 in respect of each application when delays in the approval of an application are considered to be detrimental to the legal rights of the applicant.</p> <p>CEO approved applications are required to be submitted to the next Ordinary Meeting of Council.</p> <p>No change proposed.</p>
LG5B	<p>Directions Regarding Unauthorised Development</p> <p>To give directions in relation to unauthorised development and to authorise any action available to the responsible authority under the Planning and Development Act 2005 incidental to such written direction.</p>	<p>Provides for the ability to give a written direction to an owner or any other person having undertaken a development to remove, pull down, take up, or alter the development and restore the land as nearly as practicable to its condition immediately before the development commenced, to the satisfaction of the responsible authority.</p> <p>No change proposed.</p>

<p>LG6A</p>	<p>Payments from Municipal Fund and Trust Fund To exercise the powers and discharge the duties of the local government in accordance with regulation 12 of the <i>Local Government (Financial Management) Regulations 1996 (Attachment C)</i></p>	<p>Enables the payment of creditors without specific Council approval. All payments made must be reported to Council which is undertaken by way of a monthly report via the Finance Committee.</p> <p><i>Summary of proposed updates:</i></p> <p>It is proposed to add a condition to this delegation that places a limit on the authorisation of individual payments from the fund to a maximum of \$1000 unless consultation with the Finance Committee has taken place prior to the authorisation of such a payment.</p> <p><i>See LG6E Payments from Sponsorship and Donations Fund (Attachment D)</i></p>
<p>LG6B</p>	<p>Power to Defer, Grant Discounts, Waive or Write Off Debts To exercise the powers and discharge the duties of the local government under Sections 6.12(1)(b), 6.12(1)(c) and 6.12(3) of the <i>Local Government Act 1995</i>.</p>	<p>Enables the CEO to deal with minor fee waivers, concessions and debt write-off requirements.</p> <p><i>No change proposed.</i></p>

LG6C	<p>Rates and Service Charges</p> <p>To exercise the powers and discharge the duties of the local government under Sections 6.49, 6.50(1), 6.60(2), 6.64(1), 6.64(3), 6.71(1), 6.74(1), 6.76(4) and 6.76(5). (Attachment E)</p>	<p>Enables the CEO to determine due dates for rates and to take recovery action for unpaid rates.</p> <p><u>Summary of proposed updates:</u></p> <p>Removal of explanatory notes at Sections 6.50(2), 6.50(3), 6.47 and 6.75(1) as these are operational by nature and therefore it is considered not necessary to include.</p> <p>Removal of Section 6.50(2) as this is done as part of the Budget Adoption process.</p> <p>Removal of Sections 6.56(1), 6.60(3) and 6.64(4) as these are operational by nature and do not require a delegation.</p> <p>Removal of Schedule 6.2, Clause 1(1) as any proposal to “Form a Lease” would be put before Council for determination.</p> <p>Removal of Schedule 6.3, Clause 1(4) as any proposal for “Sale of Land” would be put before Council for determination.</p> <p>Removal of Schedule 6.3, Clause 4(1) as any proposal to “Convey or Transfer” would be put before Council for determination. (Attachment F)</p>
LG6D	<p>Investment</p> <p>To invest surplus funds in accordance with the Direct Investments section of the Council's Policy 218 “Investment”.</p>	<p>Enables funds to be invested by the CEO as set out in Council Policy 218 “Investment”.</p> <p><i>No change proposed.</i></p>

LG6E	<p>Payments from Sponsorship and Donations Fund</p> <p>To determine the allocation of donations and sponsorships from the fund established for this purpose.</p> <p>(Attachment I)</p>	<p>This delegation currently requires that individual payments do not generally exceed \$1,000.</p> <p>Proposed for revocation:</p> <p>This delegation is proposed for revocation as the CEO already has this delegated power under section 6.10 Financial Management Regulations of the <i>Local Government Act 1995</i> in existing Delegation LG6A Payments from Municipal Fund and Trust Fund.</p> <p>It is also proposed that a condition be added to Delegation 6A that sets a limit on what amount the CEO can authorise via the payments from sponsorship and donations fund.</p>
LG9A	<p>Appointment of Authorised Persons</p> <p>To authorise persons, or classes of persons, on behalf of the local government for the purposes of performing particular functions in accordance with Section 9.10(1) and 9.10(2) of the <i>Local Government Act 1995</i>.</p>	<p>A person requires authorisation in order to take enforcement action. This enables the CEO to authorise others instead of requiring Council approval.</p> <p>No change proposed.</p>
LG9B	<p>Authorising Common Seal</p> <p>To authorise the affixing of the Common Seal of the City to a document that needs the City's Common Seal to be legally effective.</p>	<p>While the CEO can authorise the affixing of the Common Seal to a document as classified which in turn allows for no specific Council approval of individual documents being required, it is noted that it is also necessary for individual documents to be signed by both the Mayor and the CEO (or a senior employee authorised by the CEO and in accordance with Section 5.37 of the <i>Local Government Act 1995</i>).</p> <p>No change proposed.</p>
LG10A	<p>Claims Against the Local Government</p> <p>To consider claims against the local government for damage to property and either accept or deny liability.</p>	<p>This is intended only for minor claims within the City's insurance premium excess with a \$500 limit on claims made under this delegation.</p> <p>No change proposed.</p>

Delegations from the Council to the CEO made in accordance with Section 5.42 of the *Local Government Act* have been utilised to enable the CEO to carry out powers and duties of the local government.

The reasons for the proposed changes for the 3 delegations have been documented in the 'Purpose' column for each delegation.

It should also be noted that Delegation LG3K Acquiring and Disposing of Property has been excluded from this report as it was part of a standalone report to Council on 28 June 2017 in which Officers proposed revocation of Delegation LG3K Acquiring and Disposing of Property to be superseded by two new replacement delegations being LG3B Acquiring of Property and LG3C Disposal of Property. The Officer Recommendation was subsequently adopted (C1706/151).

All other delegations are recommended to continue unchanged.

Cat Act

Description		Purpose
CA1	<p>Administration of the Cat Act Authority to exercise the functions in relation to the administration of the <i>Cat Act 2011</i>.</p>	<p>To provide Council with measures in place that control the number of cats that can be kept and places where cats can be kept, encourage responsible cat ownership and provide for better management of the impacts of cats on the community and environment.</p> <p><i>No change proposed.</i></p>

The delegation to the CEO under the *Cat Act 2011* is recommended to continue unchanged.

Dog Act

Description		Purpose
DA1	<p>Appointment of Authorised Persons and Registration Officers To appoint persons to exercise on behalf of the local government the powers conferred on an authorised person by that Act and to authorise persons to effect the registration of dogs.</p> <p><i>(Attachment G)</i></p>	<p>To provide Council with controls and regulatory measures in relation to impounding of dogs, the number of dogs that can be kept, establishment of approved kennels and the manner in which dogs are to be confined by the occupier of a premises.</p> <p><u><i>Summary of proposed updates</i></u></p> <p>It is proposed that the current power/duty within this delegation include a specific reference to the local government in order to strengthen the delegation.</p> <p><i>(Attachment H)</i></p>

Officers are proposing a minor amendment to the delegation to the CEO under the *Dog Act 1976* as documented in the 'Purpose' column for Delegation DA1 Appointment of Authorised Persons and Registration Officers.

Having conducted the statutory annual review of delegations made under the *Local Government Act 1995, Cat Act 2011 and Dog Act 1976*, Officers are recommending changes to those delegations as listed in Attachments A through to H and in addition are proposing revocation of Delegation 6E Payments from Sponsorship and Donations Fund for the reasons outlined in the table above.

CONCLUSION

The existing delegations have served the organisation well and provide a sufficient level of authority to enable timely consideration of day-to-day local government matters as well as specific authority whereby the Council has recognised circumstances such as the nature of the airport redevelopment project.

OPTIONS

The Council may decide that it requires changes to the powers and discharge of duties to the Chief Executive Officer or choose to place conditions on any of the delegations.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Any determinations on the delegations will be effective immediately the Council's decision is made.

OFFICER RECOMMENDATION

ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED

That the Council having conducted the statutory annual review of delegations made under the *Local Government Act 1995, Cat Act 2011 and Dog Act 1976*:

1. Adopts the revised Delegation LG3J Inviting and Awarding Tenders as shown at Attachment B;
2. Adopts the revised Delegation LG6A Payments from Municipal Fund and Trust Fund as shown at Attachment D;
3. Adopts the revised Delegation LG6C Rates and Service Charges as shown at Attachment F;
4. Adopts the revised Delegation DA1 Appointment of Authorised Persons and Registration Officers as shown at Attachment H; and
5. Revokes Delegation LG6E Payments from Sponsorship and Donations Fund as shown in Attachment I.
6. Notes that all other Delegations listed in this report, ie LG3A, LG3D, LG3E, LG3F, LG3G, LG3H, LG3K, LG3L, LG3M, LG5A, LG5B, LG6B, LG6D, LG9A, LG9B, LG10A and CA1 remain unchanged.



Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG3J	<u>LGA - 3.57 Functions and General Regs 11, 14, and 18, 20 and 21A</u>	Chief Executive Officer	Inviting Tenders and Rejecting and Accepting Tenders

Delegator

Council.

Power/Duty

To exercise the powers and discharge the duties of the local government under Regulations 11, 14, 15, 16, 17, 18, 19, 20 and 21A of the *Local Government (Functions and General) Regulations* to:

- (1) ~~P~~ publicly invite tenders;
- (2) ~~Determine by determining~~ the written criteria for deciding which tender should be accepted;
- (3) ~~Reject, assess, decline to accept any tender or decide which tender to accept;~~
- (4) ~~Vary requirements before entering into a contract; and/or~~
- (5) ~~Vary a contract for the supply of goods and services.~~

~~To exercise the powers and discharge the duties of the local government under Regulation 18 of the *Local Government (Functions and General) Regulations* relating to rejecting and accepting tenders.~~

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Conditions

The delegation is subject to:

- a) Utilising the standard selection criteria as per Policy 031;
- b) ~~Complying in accordance with the requirements of the City's Purchasing Policy as it relates to tendering;~~
- c) ~~Following the City's operational processes, actice and procedures and, where practicable, relevant WALGA principles for utilising tender evaluation processes and documentation consistent with principles developed by WALGA; and~~
- e) ~~Compliance with the requirements of the City's Purchasing Policy as it relates to tendering; and~~
- d) Acceptance of a tender is not to exceed a contract value of \$500,000.

Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995* to delegate to the CEO the discharge of its powers and duties provided for in section 3.57 of the *Local Government Act 1995* and part of Regulation [11](#), [14](#), and ~~Regulation 18~~, [20 and 21A](#) of the *Local Government (Functions and General) Regulations 1996*.

Local Government Act Section 3.57. Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services.
- (2) Regulations may make provision about tenders.

Functions and General Regulation 11. When tenders have to be publicly invited

- (1) Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$150 000 unless subregulation (2) states otherwise.

Functions and General Regulation 14. Requirements for publicly inviting tenders

- (2a) If a local government —
 - (a) is required to invite a tender; or
 - (b) not being required to invite a tender, decides to invite a tender,the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.

Functions and General Regulation 18. Rejecting and accepting tenders

- (1) A tender is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for tenders.
- (2) A tender that is submitted at a place, and within the time, specified in the invitation for tenders but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender.
- (3) If, under regulation 23(4), the CEO has prepared a list of acceptable tenderers for the supply of goods or services, a tender submitted by a person who is not listed as an acceptable tenderer is to be rejected.
- (4) Tenders that have not been rejected under subregulation (1), (2), or (3) are to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them (if any) it thinks it would be most advantageous to the local government to accept.
- (4a) To assist the local government in deciding which tender would be the most advantageous to it to accept, a tenderer may be requested to clarify the information provided in the tender.
- (5) The local government may decline to accept any tender.

- (6) *If a local government has accepted a tender but acceptance of the tender does not create a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree not to enter into a contract in relation to the tender, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.*
- (7) *If a local government has accepted a tender and acceptance of the tender creates a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree to terminate the contract, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.*

Functions and General Regulation 20. Variation of requirements before entry into a contract

(1) *If, after it has invited tenders for the supply of goods or services and chosen a successful tenderer but before it has entered into a contract for the supply of the goods or services required, the local government wishes to make a minor variation in the goods or services required, it may, without again inviting tenders, enter into a contract with the chosen tenderer for the supply of the varied requirement subject to such variations in the tender as may be agreed with the tenderer.*

(2) *If -*

(a) *the chosen tenderer is unable or unwilling to enter into a contract to supply the varied requirement; or*

(b) *the local government and the chosen tenderer cannot agree on any other variation to be included in the contract as a result of the varied requirement,*

that tenderer ceases to be the chosen tenderer and the local government may, instead of again inviting tenders, choose the tenderer, if any, whose tender the local government considered it would be the next most advantageous to it to accept.

(3) *In subregulation (1) -*

minor variation means a variation that the local government is satisfied is minor having regard to the total goods or services that tenderers were invited to supply.

Functions and General Regulation 21A. Varying a contract for the supply of goods or services

(1) *If a local government has entered into a contract for the supply of goods or services with a successful tenderer, the contract must not be varied unless -*

(a) *the variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract; or*

(b) *the variation is a renewal or extension of the term of the contract as described in regulation 11(2)(i).*

Verification

Recent Council Resolution
C1612/159

Initial Council Resolution
C1103/179

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Review Requirements

In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least once every financial year.

Related Documents

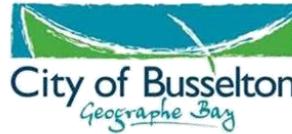
Tender Register

Notes of recent alterations

Update to provide power to exercise relevant administration functions of the *Local Government (Functions and General) Regulations 1996 (14 December 2016)*

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Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG3J	LGA - 3.57 Functions and General Regs 11, 14, 18, 20 and 21A	Chief Executive Officer	Inviting Tenders and Rejecting and Accepting Tenders

Delegator

Council.

Power/Duty

To exercise the powers and discharge the duties of the local government under Regulations 11, 14, 18, 20 and 21A of the *Local Government (Functions and General) Regulations* to:

- (1) Publicly invite tenders;
- (2) Determine the written criteria for deciding which tender should be accepted;
- (3) Reject, assess, decline to accept any tender or decide which tender to accept;
- (4) Vary requirements before entering into a contract; and/or
- (5) Vary a contract for the supply of goods and services.

Conditions

The delegation is subject to:

- a) Utilising the standard selection criteria as per Policy 031;
- b) Complying with the requirements of the City's Purchasing Policy as it relates to tendering;
- c) Following the City's operational processes and procedures for tender evaluation; and
- d) Acceptance of a tender is not to exceed a contract value of \$500,000.

Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995* to delegate to the CEO the discharge of its powers and duties provided for in section 3.57 of the *Local Government Act 1995* and part of Regulation 11, 14, 18, 20 and 21A of the *Local Government (Functions and General) Regulations 1996*.

Local Government Act Section 3.57.

Tenders for providing goods or services

- (1) A local government is required to invite tenders before it enters into a contract of a prescribed

kind under which another person is to supply goods or services.

- (2) *Regulations may make provision about tenders.*

Functions and General Regulation 11. When tenders have to be publicly invited

- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$150 000 unless subregulation (2) states otherwise.*

Functions and General Regulation 14. Requirements for publicly inviting tenders

- (2a) *If a local government —*
- (a) *is required to invite a tender; or*
 - (b) *not being required to invite a tender, decides to invite a tender,*
- the local government must, before tenders are publicly invited, determine in writing the criteria for deciding which tender should be accepted.*

Functions and General Regulation 18. Rejecting and accepting tenders

- (1) *A tender is required to be rejected unless it is submitted at a place, and within the time, specified in the invitation for tenders.*
- (2) *A tender that is submitted at a place, and within the time, specified in the invitation for tenders but that fails to comply with any other requirement specified in the invitation may be rejected without considering the merits of the tender.*
- (3) *If, under regulation 23(4), the CEO has prepared a list of acceptable tenderers for the supply of goods or services, a tender submitted by a person who is not listed as an acceptable tenderer is to be rejected.*
- (4) *Tenders that have not been rejected under subregulation (1), (2), or (3) are to be assessed by the local government by means of a written evaluation of the extent to which each tender satisfies the criteria for deciding which tender to accept and it is to decide which of them (if any) it thinks it would be most advantageous to the local government to accept.*
- (4a) *To assist the local government in deciding which tender would be the most advantageous to it to accept, a tenderer may be requested to clarify the information provided in the tender.*
- (5) *The local government may decline to accept any tender.*
- (6) *If a local government has accepted a tender but acceptance of the tender does not create a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree not to enter into a contract in relation to the tender, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.*
- (7) *If a local government has accepted a tender and acceptance of the tender creates a contract and within 6 months of the day on which the tender was accepted the local government and the successful tenderer agree to terminate the contract, the local government may accept from the other tenders the tender which it thinks it would be most advantageous to the local government to accept.*

Functions and General Regulation 20. Variation of requirements before entry into a contract

- (1) *If, after it has invited tenders for the supply of goods or services and chosen a successful tenderer but before it has entered into a contract for the supply of the goods or services required, the local government wishes to make a minor variation in the goods or services required, it may, without again inviting tenders, enter into a contract with the chosen tenderer for the supply of the varied requirement subject to such variations in the tender as may be agreed with the tenderer.*
- (2) *If -*
- (a) *the chosen tenderer is unable or unwilling to enter into a contract to supply the varied requirement; or*
 - (b) *the local government and the chosen tenderer cannot agree on any other variation to be included in the contract as a result of the varied requirement,*
- that tenderer ceases to be the chosen tenderer and the local government may, instead of again inviting tenders, choose the tenderer, if any, whose tender the local government considered it would be the next most advantageous to it to accept.*
- (3) *In subregulation (1) —*
- minor variation** *means a variation that the local government is satisfied is minor having regard to the total goods or services that tenderers were invited to supply.*

Functions and General Regulation 21A. Varying a contract for the supply of goods or services

- (1) *If a local government has entered into a contract for the supply of goods or services with a successful tenderer, the contract must not be varied unless —*
- (a) *the variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract; or*
 - (b) *the variation is a renewal or extension of the term of the contract as described in [regulation 11\(2\)\(j\)](#).*

Verification

Recent Council Resolution
C1612/159

Initial Council Resolution
C1103/179

Review Requirements

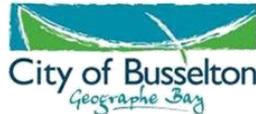
In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least once every financial year.

Related Documents

Tender Register

Notes of recent alterations

Update to provide power to exercise relevant administration functions of the *Local Government (Functions and General) Regulations 1996 (14 December 2016)*



Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG6A	FM Reg 12 (6.10)	Chief Executive Officer	Payments From Municipal Fund or Trust Fund

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Delegator

Council

Power/Duty

To exercise the powers and discharge the duties of the local government in accordance with regulation 12 of the *Local Government (Financial Management) Regulations 1996*, in relation to Section 6.10 of the *Local Government Act 1995*.

Conditions

With respect to allocation of donations and sponsorships from the fund established for this purpose in accordance with the Council's tiered funding scheme, individual payments from this fund are not to exceed \$1,000 unless consultation with the Finance Committee has first occurred.

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Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995*.

<p>Section 6.10 <i>Regulations may provide for —</i></p> <p>(d) <i>the general management of, and the authorisation of payments out of —</i></p> <p>(i) <i>the municipal fund; and</i></p> <p>(ii) <i>the trust fund, of a local government.</i></p>
<p>Financial Management Regulation 12</p> <p>(1) <i>A payment may only be made from the municipal fund or the trust fund —</i></p> <p>(a) <i>if the local government has delegated to the CEO the exercise of its power to make payments from those funds — by the CEO.</i></p>

Verification

Recent Council Resolution
C1606/140

Initial Council Resolution
C0806/188

Review Requirements

In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least once every financial year.



Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG6A	FM Reg 12 (6.10)	Chief Executive Officer	Payments From Municipal Fund or Trust Fund

Delegator

Council

Power/Duty

To exercise the powers and discharge the duties of the local government in accordance with regulation 12 of the *Local Government (Financial Management) Regulations 1996*, in relation to Section 6.10 of the *Local Government Act 1995*.

Conditions

With respect to allocation of donations and sponsorships from the fund established for this purpose in accordance with the Council’s tiered funding scheme, individual payments from this fund are not to exceed \$1,000 unless consultation with the Finance Committee has first occurred.

Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995*.

<p>Section 6.10 Regulations may provide for —</p> <p>(d) the general management of, and the authorisation of payments out of —</p> <p>(i) the municipal fund; and</p> <p>(ii) the trust fund, of a local government.</p>
<p>Financial Management Regulation 12</p> <p>(1) A payment may only be made from the municipal fund or the trust fund —</p> <p>(a) if the local government has delegated to the CEO the exercise of its power to make payments from those funds — by the CEO.</p>

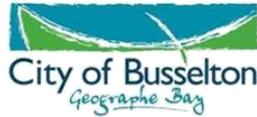
Verification

Recent Council Resolution
C1606/140

Initial Council Resolution
C0806/188

Review Requirements

In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least once every financial year.



Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG6C	6.49 6.50(1) 6.50(2) 6.56(1) 6.60(2) 6.60(3) 6.60(4) 6.64(1) 6.64(3) 6.71(1) 6.74(1) 6.76(4) 6.76(5) Sch 6.2 1(1) Sch 6.3 1(4) Sch 6.3 4(1)	Chief Executive Officer	Rates and Service Charges

Delegator

Council

Power/Duty

To exercise the powers and discharge the duties of the local government under Section 6.49, 6.50(1), ~~6.50(2)~~, ~~6.56(1)~~, ~~6.60(2)~~, ~~6.60(3)~~, ~~6.60(4)~~, 6.64(1), 6.64(3), 6.71(1), 6.74(1), 6.76(4) and, 6.76(5), ~~schedule 6.2 clause 1(1) and schedule 6.3 clauses 1(4) and 4(1)~~ of the *Local Government Act 1995*.

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Conditions

~~Nil – all actions are administrative in nature only.~~

~~The delegation shall be exercised within the limitations identified in delegation LGA 3K regarding the value of property.~~

~~The value of the property shall not exceed \$100,000 in accordance with Section 5.43(d) of the Local Government Act 1995.~~

Section 5.43(d)
A local government cannot delegate to a CEO any of the following powers or duties—
(d) ~~acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph.~~

Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995* to delegate to the CEO the discharge of its powers and duties provided for in sections 6.49, 6.50(1), ~~6.50(2), 6.56(1),~~ 6.60(2), ~~6.60(3), 6.60(4),~~ 6.64(1), 6.64(3), 6.71(1), 6.74(1), 6.76(4) ~~7, and~~ 6.76(5), ~~schedule 6.2 clause 1(1) and schedule 6.3 clauses 1(4) and 4(1)~~ of the *Local Government Act 1995*.

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Section 6.49
A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.

Section 6.50(1)
Subject to —
(a) subsections (2) and (3);
(b) any concession granted under section 6.47; and
(c) the Rates and Charges (Rebates and Deferments) Act 1992,
a rate or service charge becomes due and payable on such date as is determined by the local government.

Explanatory note only
Section 6.50(2)
The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.

Explanatory note only
Section 6.50(3)
Where a person elects to pay a rate or service charge by instalments the second and each subsequent instalment does not become due and payable at intervals of less than 2 months.

Explanatory note only
Section 6.47
Subject to the Rates and Charges (Rebates and Deferments) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive^a a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.
^aAbsolute majority required.

Section 6.50(2)
The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.

Section 6.56(1)
If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction.

Section 6.60(2)
If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.

~~Section 6.60(3)~~

~~The local government is to give to the lessor a copy of the notice with an endorsement that the original of it has been given to the lessee.~~

~~Section 6.60(4)~~

~~The local government may recover the amount of the rate or service charge as a debt from the lessee if rent is not paid in accordance with the notice.~~

Section 6.64(1)

If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —

- (a) from time to time lease the land;
- (b) sell the land;
- (c) cause the land to be transferred to the Crown; or
- (d) cause the land to be transferred to itself.

Section 6.64(3)

Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.

Section 6.71(1)

If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the Transfer of Land Act 1893, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —

- (a) the Crown in right of the State; or
- (b) the local government.

Section 6.74(1)

If land is —

- (a) rateable land;
- (b) vacant land; and
- (c) land in respect of which any rates or service charges have been unpaid for a period of at least 3 years,

the local government in whose district the land is situated may apply in the form and manner prescribed to the Minister to have the land reverted in the Crown in right of the State.

Section 6.76(4)

The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.

Section 6.76(5)

The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.

~~Schedule 6.2, Clause 1(1)~~

~~Form of Lease~~

~~The local government —~~

- ~~(a) may lease the land for such term, not exceeding 7 years at one time, as it thinks fit; and~~
- ~~(b)(a) may make such reservations and such exceptions, covenants and conditions in the lease, except a covenant for renewal of the term of the lease if the renewal would extend the term beyond 7 years, as it thinks fit.~~

Schedule 6.3, Clause 1(4)
Conditions for Exercise of Power for Sale of Land
The local government is to appoint a time not less than 3 months and not more than 12 months from the service of the notices required by this clause as the time at which the land may be offered for sale by public auction.

Schedule 6.3, Clause 4(1)
Power of local government to transfer or convey land
A local government exercising the power of sale of any land has power —
(a) — by transfer, where the land is under the Transfer of Land Act 1893; and
(b) — by deed or transfer, where the land is not under that Act,
to transfer or convey to the purchaser an indefeasible estate in fee simple subject only to the encumbrances specified in section 6.75(1)(c), (d) or (e).

Explanatory note only
Section 6.75(1)
Where, at the expiration of 12 years from the taking of possession of any rateable land by a local government under section 6.64 —

by operation of this section the fee simple in the land is to be transferred to the local government subject to —
(c) — easements in favour of the public which affect the land;
(d) — the rights of the Crown in right of the State or Commonwealth or a department, agency, or instrumentality of the Crown in right of the State or Commonwealth; and
(e)(c) — rates and taxes (other than local government rates and service charges) due on the land, but free from other encumbrances.

Verification

Recent Council Resolution
C1606/140

Initial Council Resolution
C0806/188

Review Requirements

In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least at least once every financial year.

Related Documents

Rates and Charges (Rebates and Deferments) Act 1992

Transfer of Land Act 1893

Notes of Alteration

Update to refer to the correct section of the *Local Government Act 1995* (22 June 2011)



Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG6C	6.49 6.50(1) 6.60(2) 6.64(1) 6.64(3) 6.71(1) 6.74(1) 6.76(4) 6.76(5)	Chief Executive Officer	Rates and Service Charges

Delegator

Council

Power/Duty

To exercise the powers and discharge the duties of the local government under Sections 6.49, 6.50(1), 6.60(2), 6.64(1), 6.64(3), 6.71(1), 6.74(1), 6.76(4) and 6.76(5) of the *Local Government Act 1995*.

Conditions

Nil – all actions are administrative in nature only.

Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995* to delegate to the CEO the discharge of its powers and duties provided for in sections 6.49, 6.50(1), 6.60(2), 6.64(1), 6.64(3), 6.71(1), 6.74(1), 6.76(4) and 6.76(5) of the *Local Government Act 1995*.

<p>Section 6.49 <i>A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.</i></p>
<p>Section 6.50(1) <i>Subject to –</i> (a) <i>subsections (2) and (3);</i> (b) <i>any concession granted under section 6.47; and</i> (c) <i>the Rates and Charges (Rebates and Deferments) Act 1992,</i> <i>a rate or service charge becomes due and payable on such date as is determined by the local government.</i></p>

Section 6.60(2)

If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.

Section 6.64(1)

If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —

- (a) from time to time lease the land;*
- (b) sell the land;*
- (c) cause the land to be transferred to the Crown; or*
- (d) cause the land to be transferred to itself.*

Section 6.64(3)

Where payment of rates or service charges imposed in respect of any land is in arrears the local government has an interest in the land in respect of which it may lodge a caveat to preclude dealings in respect of the land, and may withdraw caveats so lodged by it.

Section 6.71(1)

If under this Subdivision land is offered for sale but at the expiration of 12 months a contract for the sale of the land has not been entered into by the local government, it may by transfer, where the land is subject to the provisions of the Transfer of Land Act 1893, and by deed, where the land is not subject to the provisions of that Act, transfer or convey the estate in fee simple in the land to —

- (a) the Crown in right of the State; or*
- (b) the local government.*

Section 6.74(1)

If land is —

- (a) rateable land;*
- (b) vacant land; and*
- (c) land in respect of which any rates or service charges have been unpaid for a period of at least 3 years, the local government in whose district the land is situated may apply in the form and manner prescribed to the Minister to have the land revested in the Crown in right of the State.*

Section 6.76(4)

The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.

Section 6.76(5)

The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.

Verification

Recent Council Resolution
C1606/140

Initial Council Resolution
C0806/188

Review Requirements

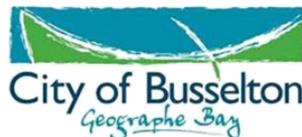
In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least once every financial year.

Related Documents

Rates and Charges (Rebates and Deferments) Act 1992

Transfer of Land Act 1893

Notes of Alteration
Update to refer to the correct section of the <i>Local Government Act 1995 (22 June 2011)</i>



Instrument of Delegation

Reference Number	Act Reference	Delegate	Delegation Subject
DA1	Dog Act 1976	Chief Executive Officer	Appointment of Authorised Persons and Registration Officers

Delegator

Council.

Power/Duty

To appoint persons to exercise on behalf of the local government the powers conferred on [the local government, and](#) an authorised person by that Act and to authorise persons to effect the registration of dogs.

Conditions

Nil.

Statutory Framework

Council is exercising its power of delegation under Section 10AA(1) of the *Dog Act 1976*.

Verification

Recent Council Resolution
C1606/140

Initial Council Resolution
C1312/328

Review Requirements

In accordance with the requirements of Section 10AB of the *Dog Act 1976*, at least once every financial year.

Related Documents

Dog Local Law



Instrument of Delegation

Reference Number	Act Reference	Delegate	Delegation Subject
DA1	Dog Act 1976	Chief Executive Officer	Appointment of Authorised Persons and Registration Officers

Delegator

Council.

Power/Duty

To appoint persons to exercise on behalf of the local government the powers conferred on the local government, and an authorised person by that Act and to authorise persons to effect the registration of dogs.

Conditions

Nil.

Statutory Framework

Council is exercising its power of delegation under Section 10AA(1) of the *Dog Act 1976*.

Verification

Recent Council Resolution
C1606/140

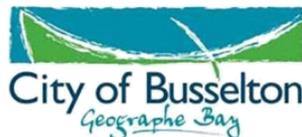
Initial Council Resolution
C1312/328

Review Requirements

In accordance with the requirements of Section 10AB of the *Dog Act 1976*, at least once every financial year.

Related Documents

Dog Local Law



Instrument of Delegation

Reference Number	Local Government Act Reference	Delegate	Delegation Subject
LG6E	6.10	Chief Executive Officer	Payments from Sponsorship and Donations Fund.

Delegator

Council

Power/Duty

To determine the allocation of donations and sponsorships from the fund established for this purpose in accordance with the Council's tiered funding scheme.

Conditions

Individual payments from this fund are not to exceed \$1,000 unless consultation with the Finance Committee has first occurred.

Statutory Framework

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995*.

Verification

Recent Council Resolution
C1606/140

Initial Council Resolution
C1110/333

Review Requirements

In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, at least once every financial year.

6.2 REVIEW OF POLICY 023 - COMMUNITY ENGAGEMENT

SUBJECT INDEX:	Plans, Policies and Procedures
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Finance and Corporate Services
ACTIVITY UNIT:	Governance Services
REPORTING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Revised Policy 023 - Community Engagement ↓ Attachment B Revised Policy 023 - Community Engagement - Tracked Changes ↓

PRÉCIS

The purpose of this report is to review Policy 023 – Community Engagement.

BACKGROUND

Council has previously adopted a policy relating to Community Engagement being:

Policy 023 adopted on 12 March 2014 - Community Engagement C1403/049.

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.

RELEVANT PLANS AND POLICIES

Policy 023 – Community Engagement.

FINANCIAL IMPLICATIONS

There are no direct financial implications associated with this report.

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

This policy 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 residual risks identified as being high or medium as a result of the Officer Recommendation.

CONSULTATION

As the revised Policy is based on the City's existing policy there is no change in focus this policy is not considered to require any public consultation.

OFFICER COMMENT

During the ordinary course of reviewing the policy, the contents have been modified by making minor changes as shown in attachment B.

CONCLUSION

As part of the regular practice of reviewing Council policies, a review was carried out on Policy 023 - Community Engagement. Following this review officers are recommending that the revised policy be adopted.

OPTIONS

The Council may agree or may not agree to the change of the existing policy or may seek to make alterations to the policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The existing policy would be cancelled effective immediately upon adoption of Council and the new Codes would become effective.

OFFICER RECOMMENDATION

That the Council adopted the revised Policy 023 - Community Engagement as shown in attachment A.

Last updated 19 May 2017

023	Community Engagement and Consultation	V2 Current
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STATEMENT

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

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

PURPOSE / RATIONALE

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

SCOPE

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

DEFINITIONS

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

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

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

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

Last updated 19 May 2017

POLICY CONTENT

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

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

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

Principles of openness and accountability in decision-making processes

Council will be guided by the following principles:

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

Identifying engagement and consultation opportunities

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

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

Consultation and Engagement mechanisms include but are not limited to:

- the Your Say Busselton online engagement portal via the City's website which offers discussion forums, surveys, quick polls, Q&A, guest books
- social media including Facebook, Instagram and Twitter;
- access to Council meetings and briefings for presentations;
- planned stakeholder information sessions;
- school /community group visits;
- electors meetings;
- informal meet and greet sessions with elected members;
- expos, public displays, open days and community events;
- formal advertising in print, broadcast and TV;

- public meetings or community forums held to address specific issues;
- market research projects carried out using proven sampling processes and market analysis;

Any combination of the above mechanisms may be used.

Responsibilities

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

Last updated 19 May 2017

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

Policy Background

Policy Reference No. - 020
Owner Unit – Public Relations
Policy approved by – Council on 22 September 2010
Review Frequency – As Required

History

Council Resolution	Date	Information
C		General Update
C1009/318	22 September, 2010	Date of implementation
	29 May 2017	Date of Implementation Version 3

Last updated ~~12/03/2014~~ 19 May 2017

023	Community Engagement and Consultation	V2 Current
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STATEMENT

Council places a high priority ~~and recognises the importance of~~ engaging with the community and encouraging community participation in decision-making processes.

~~Council is committed to engaging broadly and proactively with the community, with the~~ purpose of this policy ~~being to~~ outline the framework Council and the City will use to engage with the community and key stakeholders.

PURPOSE / RATIONALE

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

Comment [CG1]: Comment by Sarah
Is this a bit like saying we have to versus we want to?

SCOPE

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

DEFINITIONS

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

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

Consultation ~~is an essential component of a strong engagement program. It~~ involves two-way information exchange and its primary purpose is to obtain public feedback to inform decision-making on a particular issue ~~(s) or range of issues~~.

~~In this policy, consultation refers to a process which facilitates communication between the Council, the community and other stakeholders who are directly affected in the planning, determination and evaluation of policy, programs and services provided by the City.~~

Comment [CG2]: Comment by Sarah
Is this paragraph needed?

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

Last updated 12/03/2014 19 May 2017

POLICY CONTENT

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

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

The Policy is supported by a ~~Practice and Procedures procedural document~~ documents including media guidelines and social media policy which outlines how those with a responsibility for engagement and/or consultation initiatives, on behalf of the City may undertake to fulfil them.

Comment [CG3]: Comment by Sarah ☺ Is there a Practice and Procedures document?

Principles of openness and accountability in decision-making processes

~~In relation to their approach to engagement and consultation,~~ Council will be guided by the following principles:

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

Comment [CG4]: Comment by Sarah ☺ Consider relocating this dot point as last dot point?

Identifying engagement and consultation opportunities

~~Council may elect to consult the community on a broad range of issues.~~ Particular areas of routine or established consultation include (but are not limited to) ~~strategic management~~ issues such as development of or ~~and/or~~ amendment to:

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

~~Consultation and Engagement mechanisms opportunities~~ include but are not limited to:

- ~~online engagement portals such as the the Your Say Busselton online engagement portal via the City's website which offers ;discussion forums, surveys, quick polls, Q&A, guest books~~
- ~~social media including Facebook, Instagram and Twitter;~~
- access to Council meetings and briefings for presentations;
- planned stakeholder information sessions;
- school /~~community group~~ visits;
- electors meetings;
- ~~informal~~ meet and greet sessions with elected members;
- ~~open days and free community events;~~
- ~~civic events and award ceremonies;~~
- ~~stalls expos, and public displays, open days and community events;~~
- formal advertising ~~and in print, broadcast and TV;~~
- ~~participation in community events/openings etc.~~

Last updated ~~12/03/2014~~ 19 May 2017

Formalising engagement and consultation mechanisms

~~The scope and methodology of consultation will be determined by the nature of the issue as well as the resources and constraints operating at the time. Consultation with the community may take many forms including, but not limited to, the following:~~

- ~~• Advertisements in the local newspapers;~~
- ~~• Broadcast, TV and electronic media;~~
- ~~• Online surveys on the Council's Website;~~
- ~~• Two-way information exchange via web logs (blogs) and various social media platforms;~~
- ~~• Circular letters / emails sent to the community as a whole or those areas directly affected by any Council proposal;~~
- Public-public meetings or community forums held to address specific issues;
- Market-market research projects carried out using proven sampling processes and market analysis;
- and
- ~~• Questionnaires or surveys.~~

Any combination of the above mechanisms may be used.

Responsibilities

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

City Officers: Will ensure principles outlined in this Policy are included in project planning. This requires Officers to: Where Council decision-making is involved the City administration will:

- identify ~~the~~ consultation opportunities;
- recommend ~~an~~ appropriate mechanism(s) ~~(or tool)~~ ~~and~~ ~~and~~ budget requirements;
- ensure that the community has adequate opportunity to make its view known to the Council; and
- report to Council on the Engagement/consultation outcomes (if required).

Comment [CG5]: Comment by Sarah
 ☛ Is it just in these instances? Are we moving more to an engagement model which sees us engage even when we don't have a specific decision-making purpose?

Policy Background

Policy Reference No. - 020
 Owner Unit – Public Relations
~~Originator – Public Relations Officer~~
 Policy approved by – Council on 22 September 2010
~~Date Approved – 22 September, 2010~~
 Review Frequency – As Required

History

Council Resolution	Date	Information
<u>C</u>		<u>General Update</u>
<u>C1403/049</u>	<u>12 March, 2014</u>	<u>Version 2</u>
C1009/318	22 September, 2010	Date of implementation <u>Version 1</u>
	<u>29 May 2017</u>	<u>Date of Implementation</u> <u>Version 3</u>

6.3 REVIEW OF PROSECUTION POLICY

SUBJECT INDEX:	Legal
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Legal Services
REPORTING OFFICER:	Manager Corporate Services - Sarah Pierson
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Current Prosecution Policy Attachment B Proposed Enforcement and Prosecution Policy

PRÉCIS

This report presents a revised Enforcement and Prosecution Policy (Attachment B) for Council approval, currently titled Prosecution Policy. The policy has been simplified and more operational aspects removed, with a view to include the latter in an Operational Practice and Procedure or guideline developed for the purpose of providing general guidance to City officers. More detailed guidance has and will also be developed relating to specific areas of operation including separate policies relating to rangers enforcement, development compliance and environmental health compliance.

BACKGROUND

The current Prosecutions Policy (Attachment A) was adopted in May 2010. The policy was designed to provide general information in relation to the City's approach to enforcement action, as well to guide and assist officers in the performance of their functions. However, it is considered that the current policy is unnecessarily detailed. A review of the current policy and the City's compliance and enforcement operations indicated that much of the detail is of an operational nature and would be best contained within internal guidance documents or operational practice and procedures and / or policies relating to specific operational areas, with this policy to instead provide an overarching higher level of guidance and information.

STATUTORY ENVIRONMENT

In terms of Sections 2.5 and 2.6 of the *Local Government Act 1995* (Act) the City of Busselton, as a local government, is a body corporate with perpetual succession, the legal capacity of a natural person and with its elected council as the governing body. Section 3.1(1) of the Act specifies that the general function of a local government is to provide for the good government of persons in its district and, in accordance with Section 2.7, Council is to determine the City's policies for that purpose.

The proposed Enforcement and Prosecution Policy and Council's ability to make the policy are consistent with abovementioned legislative provisions.

RELEVANT PLANS AND POLICIES

Nil

FINANCIAL IMPLICATIONS

There are no financial implications arising from the revision of the policy.

STRATEGIC COMMUNITY OBJECTIVES

The Officers recommendation aligns with and supports the Council's Strategic Community Plan 2017, specifically Key Goal Area 6 – 'Leadership' and Community Objective 6.2 – 'Governance systems, process and practices are responsible, ethical and transparent'.

RISK ASSESSMENT

The proposed policy does not materially change the City's position in relation to enforcements and prosecutions and hence poses no risk.

CONSULTATION

Nil

OFFICER COMMENT

The proposed Enforcement and Prosecution Policy does not materially change the City's position in relation to prosecutions. The policy is simply being streamlined with more operational aspects removed, for inclusion in an operational practice or guidance document. Additionally more detailed guidance has and will be developed relating to specific areas of operation, including separate policies relating to rangers enforcement, development compliance and environmental health compliance.

The proposed policy continues to provide information in relation to the reporting and characterising of transgressions and outlines the enforcement options available where it is determined that action is warranted. In comparison to the current policy, the proposed policy provides a higher level overview of the City's approach as opposed to outlining in detail the decision making criteria to be utilised when considering and actioning a prosecution. It is felt that a two tiered approach, whereby the proposed policy provides high level guidance and direction in relation to enforcement and prosecution action and operational practice and procedures deals more with day-to-day operational matters is an appropriate way of administering these matters.

CONCLUSION

It is recommended that Council adopt the proposed Enforcement and Prosecution Policy as per Attachment B.

OPTIONS

The Council may not agree with the revisions to the policy and may seek for the policy to be re-endorsed in its current format or for alternative changes to be made.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The proposed policy will be effective as of its adoption by Council.

OFFICER RECOMMENDATION

That the Council:

Adopts the proposed Enforcement and Prosecution Policy as per Attachment B, to replace the current Prosecution Policy contained in Attachment A.

Last updated 12/05/2010 (implementation)

015	Prosecutions	V1 Current
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PURPOSE

Objective

The objective of this policy is to ensure that the laws administered by the Shire of Busselton are applied impartially, in a fair and consistent manner. It aims to ensure decisions in relation to infringements and prosecutions are based on appropriate criteria which are accountable, transparent, open, fair and capable of being applied consistently across the broad range of circumstances to which the laws apply.

The policy recognises that regulation and enforcement are essential to the integrity of the Shire of Busselton's (referred to as 'the Shire') resources. The policy is intended to guide and assist officers in the performance of their functions and is not a substitute for the professional judgement of those officers in a particular circumstance.

SCOPE

Policy Statement

Through application of this policy, the Shire will avoid arbitrary decisions, and will ensure infringements are not issued, and prosecutions are not conducted, for improper purposes, capriciously or oppressively.

This policy embraces the principles contained in the *Statement of Prosecution Policy and Guidelines* issued by the Director of Public Prosecutions and published in the Western Australian *Government Gazette* on 20 September 1999.

This policy applies to all infringements and prosecutions for offences under the acts, regulations and local laws administered by the Shire (referred to as the 'Acts' or 'the Regulations' or 'the Local Laws') and as the circumstances allow, to all appeals arising out of proceedings in respect of any such prosecutions.

This policy is provided for information purposes only to provide general guidance on how enforcement action is approached by the Shire. The policy:

- is not legally binding on the Shire;
- does not place an obligation on the Shire to investigate any alleged offence, or initiate, continue or withdraw a prosecution or infringement;
- is general in nature and does not exhaustively address all the specific limitations and considerations that may be relevant;
- is not intended to be viewed as a substitute for legal advice or legal process.

"Authorised Person" means a person appointed under section 9.10 of the *Local Government Act 1995* (referred to as the 'LGA') to issue an infringement, a person acting in the course of his or her duties as an employee of the Shire or a person authorised to commence a prosecution under section 9.24 of the LGA, or otherwise authorised to commence a prosecution or issue an infringement under any other law the Shire administers.

Last updated 12/05/2010 (implementation)

POLICY CONTENT

1. PRINCIPLES OF ENFORCEMENT

- (i) Enforcement action will be taken by the Shire where amenity, environment, public safety or other relevant objectives under Acts, Regulations or Local Laws require enforcement action.
- (ii) Enforcement action will only be undertaken when the statutory prerequisites are satisfied.
- (iii) Prosecution is an enforcement tool to be employed where it is the appropriate response to a particular circumstance and is not an enforcement option to be applied only as a last resort.
- (iv) Shire officers do not have the authority to condone or authorise the continuation of an offence once detected.
- (v) Enforcement action will be taken in proportion to the magnitude of the alleged offence and/or the environmental or amenity impact, taking into account the conduct of the parties and implications for the administration of the legislation.
- (vi) Decisions on enforcement action will be taken in a timely fashion, however flexibility will be retained to be able to respond to additional information or changes in circumstance.
- (vii) Laws, Regulations, and Local Laws will be applied consistently and fairly across all sectors of the community, industry and government.

2. DISCRETION

The Shire has discretion in considering what is the appropriate enforcement action to be applied. Key points in this determination include:

- the appropriate accused to pursue;
- the appropriate enforcement action in the circumstances (generally the decision to issue an infringement or commence a prosecution);
- and withdrawal of an enforcement action that has been taken.

3. CHOOSING THE APPROPRIATE ACCUSED

A wide range of people may have participated in, or contributed to, an offence. It is not always appropriate to take enforcement action against every person who may be liable for an offence. In selecting the appropriate accused or recipient of an infringement notice, the Shire will generally consider the following criteria:

- who was primarily responsible for the offence, i.e. who formed the intent, committed the act, and who created the material circumstances leading to the breach;
- potential liability of the corporation, body corporate, directors and executive officers, including vicarious liability;
- potential liability of employees and/or contractors;
- evidence available to support a charge against the various potential accused;
- the likely effectiveness of court orders against the potential accused;
- the cooperation of one potential accused which may assist in achieving a conviction against another accused for a particular offence.

Last updated 12/05/2010 (implementation)

4. CHOOSING THE APPROPRIATE ENFORCEMENT ACTION

To identify the appropriate enforcement action to take in a particular circumstance, the Shire will generally consider the following criteria:

- the enforcement measures that are necessary to ensure compliance with the objects of the legislation, and those most likely to achieve the best amenity or environmental outcomes or to promote the objects of the relevant legislation;
- the seriousness of the incident having regard to the potential impacts on amenity or the environment, the impacts on people, impacts on the statutory responsibilities imposed by the legislation and implications for the administration of the legislation. Seriousness includes location, severity, quantity, extent and duration of that damage or impact, or potential thereof, or the undermining of an administrative process designed to prevent detrimental impacts on amenity and the environment or promote the objects of the legislation;
- voluntary action by the offender to mitigate any harm to the environment, amenity or other impacts of relevance under the legislation and to put into place mechanisms to prevent any recurrence;
- failure to notify or delayed notification of the incident to the Shire;
- failure to comply with requests, lawful directions or notices given by the Shire;
- cooperation given to the Shire by the offender, and willingness to commit to appropriate remedial actions;
- the existence and effective implementation of environmental management systems or other measures or procedures, such as restoration and rehabilitation systems, to address relevant impacts under any legislation;
- actions taken in adherence to requirements of existing environmental management systems or other measures or procedures, such as restoration and rehabilitation systems, to address relevant impacts;
- previous history of the offender with regard to compliance with legislation the Shire administers, and frequency of offences;
- whether false or misleading statements have been made;
- costs to be avoided by the Shire and/or profits realised from the wrongdoing;
- culpability of the offender, including any mitigating or aggravating circumstances;
- issues of public concern, including the need for specific and general deterrence;
- legal precedents; and
- statutory time limits.

5. THE DECISION TO ISSUE AN INFRINGEMENT NOTICE

The principles which apply to a decision to prosecute may not equally apply to a decision to issue an infringement. Whilst the general principles of impartiality, rights of the alleged offender, interests of victims, and interests of the community should be considered, many of the factors outlined in relation to prosecutions may not always be readily applicable. The option to issue an infringement is only available for specific offences as prescribed in legislation.

Pursuant to section 9.16 of the LGA a local government can only prescribe an offence to be one in which an infringement notice can be issued if a prosecution for the offence could be commenced by the local government and the local government is satisfied that –

- the commission of the offence would be a relatively minor matter; and
- only straightforward issues of law and fact would be involved in determining whether the offence was committed, and the facts in issue would be readily ascertainable.

Last updated 12/05/2010 (implementation)

These principles should also be adopted when considering when to issue an infringement notice under a local law under the LGA. The issue of an infringement notice should also occur within a short a period of time as possible following the commission of the offence.

An infringement notice may be issued when:

- the offence is one that may be dealt with by issue of an infringement notice under the legislation;
- there is *prima facie* evidence of a legislative breach;
- a one-off legislative breach has occurred which is of minor impact and which can be remedied easily;
- a breach is the result of failure to comply with normal operating procedures or requirements which would have prevented that breach;
- the facts are apparently indisputable; and
- it is likely to be a sufficient deterrent.

An infringement notice will not be issued when:

- large-scale environmental harm or serious impacts on amenity have occurred;
- the extent of the harm to the environment or the impact on amenity cannot be assessed immediately;
- the breach has had a significant impact upon other persons or property;
- the breach is continuing, and it is not within the alleged offender's ability to remedy quickly; or
- multiple breaches have occurred (unless the breaches are entirely unrelated).

Where an alleged offender commits an unwitting breach of the Acts, Regulations or Local Laws, and where the breach is rectified immediately on it being brought to the alleged offenders attention, the Authorised Officer should consider whether a caution or written warning would be sufficient in the circumstances. A written warning may be given when:

- an administrative, minor or technical breach has occurred;
- the detrimental impact, or potential detrimental impact, is minor or trivial in nature;
- the matter is one which can be quickly and simply put right; and
- a written warning would be appropriate.

The following matters should not to be taken into consideration in determining whether to issue an infringement, written warning or caution:

- (i) the race, colour, ethnic origin, sex, religious beliefs, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender;
- (ii) the possible political consequences of the exercise or non- exercise of discretion;
- (iii) the Authorised Person's personal feelings concerning the alleged offender or victim; and
- (iv) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

Last updated 12/05/2010 (implementation)

6. THE DECISION TO PROSECUTE

In applying the law impartially, in a fair and consistent manner, it is necessary to consider:

- the rights of the alleged offender;
- the interests of victims; and
- the interests of the community.

Ordinarily discretion on whether to prosecute will be exercised so as to recognise the courts' central role in the criminal justice system in determining guilt and imposing appropriate sanctions for criminal conduct.

Where an Authorised Person obtains sufficient evidence to establish a *prima facie* case for a breach of the Acts, Regulations or Local Laws, and there is a reasonable prospect of a conviction, consideration will be given to taking prosecution action, instead of or in addition to applying alternative enforcement actions. Such circumstances include:

- (i) where the issue of notices/orders/directives/infringements is considered insufficient for ensuring compliance with the Acts or Regulations or where there is no option to infringe or implement an alternative deterrent. This may include where the financial benefit to the alleged offender that can be derived from the continuation of the breach would render alternative action ineffective;
- (ii) where, in the opinion of an Authorised Person, an alleged breach of the Act, Regulations or Local Laws either has resulted, or could have resulted in serious injury, serious risk/damage to property or the environment or a serious health hazard or ongoing and serious detriment to amenity;
- (iii) alleged failure to comply with a notice within a reasonable period of time;
- (iv) where a person flagrantly and/or deliberately breaches legislation;
- (v) where an Authorised Person alleges a person has repeated the same serious offence; and
- (vi) wilful obstruction of an Authorised Person.

Two essential conditions are to be met before commencing the prosecution action. Firstly, that there is sufficient evidence to establish a *prima facie* case, and secondly that it is judged to be in the public interest.

7. A PRIMA FACIE CASE

The question whether there is a *prima facie* case is one of law. This involves consideration of:

- whether the evidence could lead to the conclusion, beyond reasonable doubt, that all the elements of the offence have been proved.

Where giving due consideration to appropriate advice, the available material does not support a *prima facie* case, the prosecution should not be instituted or proceed under any circumstances.

Last updated 12/05/2010 (implementation)

8. THE PUBLIC INTEREST

If a *prima facie* case exists the prosecution of an offence must also be in the public interest.

This requires the balancing of a broad range of factors, as they relate to the particular case. The presence of a particular factor does not necessarily mean it would be against, or in, the public interest to proceed with a prosecution, and the same factor could equally weigh in favour of prosecution in one particular case, yet weigh against it in another. Ultimately it is all the relevant factors taken together which will determine, on balance, whether it is in the public interest to proceed.

It is the role of the courts to determine guilt or innocence and appropriate penalty, if applicable. While all prosecutions must be in the public interest, the test of public interest must be applied in a manner which does not remove the central role of the courts in the prosecution process. As is the case with other issues relating to the public interest, it is a matter of balance and exercise of appropriate judgement.

It is in the public interest that prosecutions be treated fairly and impartially. A prosecution which is instituted for improper purposes, capriciously or oppressively is not in the public interest. Similarly, it is not in the public interest not to commence a prosecution for political or personal reasons.

9. EVALUATION OF THE PUBLIC INTEREST

9.1 Reasonable Prospects of Conviction

It is not in the public interest to proceed with a prosecution which has no reasonable prospect of resulting in a conviction.

A prosecution should be discontinued if based on the available material and appropriate advice there is no reasonable prospect of conviction, unless further prompt investigation will remedy any deficiency in the prosecution case.

The evaluation of prospects of conviction requires dispassionate and impartial judgment, based on the advice and experience of the Shire's solicitor/s.

Such decisions may on occasions be difficult. However, this does not mean that only cases perceived as 'strong' should be prosecuted. Generally, the resolution of disputed questions of fact is for the court and not the Shire. A case considered 'weak' by some may not seem so to others. Nevertheless, the Shire has a responsibility, in the public interest, to exercise appropriate discretion and judgement in the assessment of the prospects of conviction when deciding to bring a matter to court. The assessment of the prospects of conviction is not to be understood as an usurpation of the role of the court but rather as an exercise of discretion in the public interest.

The evaluation of the prospects of conviction includes consideration of:

- (i) whether any alleged confession was given voluntarily and whether there are grounds for reaching the view that a confession will not meet the various criteria for admission into evidence;
- (ii) the likelihood of the exclusion from the trial of a confession or other important piece of evidence in the exercise of a judicial discretion,. In the case of an alleged confession, regard should be given to whether a confession may be unreliable having regard to the intelligence of the accused, or linguistic or cultural factors;

Last updated 12/05/2010 (implementation)

- (iii) the competence, reliability and availability of witnesses;
- (iv) matters known to the prosecution which may significantly lessen the likelihood of acceptance of the testimony of a witness. Regard should be given to the following:
 - (a) Has the witness made prior inconsistent statements relevant to the matter?
 - (b) Is the witness friendly or hostile to the defence?
 - (c) Is the credibility of the witness affected by any physical or mental impairment;
- (v) the existence of an essential conflict in any important particular of the prosecution case among prosecution witnesses;
- (vi) where identity of the alleged offender is in issue, the cogency and reliability of the identification evidence;
- (vii) any lines of defence which have been indicated by or are otherwise plainly open to the defence.

Evaluation of the prospects of conviction will generally not have regard to:

- (i) material not disclosed to the prosecution by the defence;
- (ii) notification of a defence which purports to rest upon unsubstantiated assertions of fact;
- (iii) whether assertions of facts upon which a defence or excuse are based are contentious, or rest on information which would not, in the opinion of the prosecutor, form the basis of credible cogent evidence.

9.2 Other Relevant Public Interest Factors

9.2.1 Factors Which May Weigh Against Prosecution

Despite the existence of a *prima facie* case and reasonable prospects of conviction, it may not be in the public interest to proceed if other factors, singly or in combination, render a prosecution inappropriate.

Presence of one or more of the following factors does not necessarily indicate that the prosecution should not proceed, but rather that the factor(s) should be balanced against other factors relating to the case. Factors which may, singly or in combination, render a prosecution inappropriate in the public interest include:

- (i) the trivial or technical nature of the alleged offence in the circumstance;
- (ii) if the offender is a juvenile, the age and apparent maturity of the individual, the capacity of the juvenile to know that he or she ought not do the act or make the omission, the seriousness of the offence and any other special factor;
- (iii) the youth, age, physical or mental health or special infirmity of the victim, alleged offender or a witness;

Last updated 12/05/2010 (implementation)

- (iv) the alleged offenders antecedents (ie previous history);
- (v) the staleness of the alleged offence, including delay in the prosecution process which may be oppressive;
- (vi) the degree of culpability of the alleged offender in connection with the offence;
- (vii) the obsolescence or obscurity of the law;
- (viii) whether a prosecution would be perceived as counter-productive to the interests of justice;
- (ix) the availability or efficacy of any alternatives to prosecution;
- (x) the lack of prevalence of the alleged offence and need for deterrence, either personal or general;
- (xi) whether the alleged offence is of minimal public concern;
- (xii) the attitude of the victim of an alleged offence to prosecution;
- (xiii) the likely length and expense of a trial;
- (xiv) whether the alleged offender has co-operated in the investigation and prosecution of others or has indicated an intention so to do;
- (xv) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (xvi) the likely effect on public order and morale;
- (xvii) whether a sentence has already been imposed on the offender which adequately reflects the criminality of the episode; and
- (xviii) whether the alleged offender has already been sentenced for a series of other offences and the likelihood of the imposition of an additional penalty, having regard to the totality principle (ie where a person has been sentenced to a penalty to a level where "enough is enough"), is remote.

9.2.2 Factors Which May Weigh in Favour of a Prosecution Proceeding

Factors which might require the prosecution to proceed in the public interest, and which should be balanced against any factors weighing against, include:

- (i) the need to maintain the rule of law (ie the application of the law without the influence of arbitrary power; the equal accountability of all before the law; and the protection of the rights and freedoms of individuals through the courts);
- (ii) the need to maintain public confidence in basic constitutional institutions, including Parliament and the courts;
- (iii) the entitlement of any person to be awarded compensation if guilt is adjudged;

Last updated 12/05/2010 (implementation)

- (iv) the release from obligation by a person to pay compensation, insurance or other similar payments in relation to the action of the defendant if the defendant is found guilty of an offence;
- (v) the need for punishment and deterrence;
- (vi) the circumstances in which the alleged offence was committed; and
- (vii) where an accused is issued infringement and elects to have the matter dealt with by court, and the matter may otherwise be considered trivial.

9.2.3 Irrelevant Factors

The following matters are not to be taken into consideration in evaluating the public interest:

- (i) the race, colour, ethnic origin, sex, religious beliefs, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender;
- (ii) the possible political consequences of the exercise or non- exercise of discretion;
- (iii) the prosecutor's personal feelings concerning the alleged offender or victim; and
- (iv) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

10. NEGOTIATED OUTCOME

Either prior to commencing a prosecution, or during the prosecution, the Shire may enter into negotiations with the accused either of its own initiative or in response to a proposal by the accused. The Shire may consider accepting a plea to a lesser or alternate offence, a reduced number of charges, an amendment to the statement of material facts, or a withdrawal of the charge in consideration for an alternate remedial action by the accused ("negotiated outcome").

The following factors are relevant in considering whether a negotiated outcome can be accepted:

- all of the factors outlined in the decision to prosecute section of this policy;
- where the negotiated outcome reasonably reflects the seriousness of the offence and provides an adequate basis for resolution;
- where the evidence available to support the prosecution case may be weak in a particular element, or fraught with difficulty, and the public interest will be satisfied with an agreement to undertake remedial action;
- when the saving of cost to the community is greater, when weighed against the likely disposition of the matter proceeding to trial without acceptance of the negotiated outcome; or
- when to do so will save witnesses from the trauma of a court appearance.

A negotiated outcome should not be accepted where to do so would distort the facts disclosed by the available evidence and result in an outcome disproportionate to the act.

In considering whether to accept a negotiated outcome regard should be had to the views of victim of the offence, impact on environment and/or impact on amenity caused by the offending conduct.

Last updated 12/05/2010 (implementation)

Policy Background

Policy Reference No. - 015

Owner Unit – Legal

Originator – Legal Officer

Policy approved by – Council

Date Approved – 12 May, 2010

Review Frequency – As required

Related Documents –

Acts, Regulations and Local Laws administered by the Shire

Background/History - Initiated May 2010

History

Council Resolution	Date	Information
C1005/149	12 May, 2010	Date of implementation Version 1

Last updated

015	Enforcement and Prosecutions	V2
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1. PURPOSE

The purpose of this Policy is to provide high level guidance to the City's compliance and enforcement action to ensure it is consistent and procedurally fair and to facilitate transparency by explaining the process that leads to a prosecution. More detailed guidance for Officers may also be found in operational practice and procedures and in separate policies relating to specific operational areas.

2. SCOPE

Local government is empowered to administer a broad suite of legislation, which includes the responsibility for enforcing the legislation (**Laws**). This role also extends to enforcing relevant subsidiary legislation, including regulations and the local government's local planning scheme and local laws.

3. POLICY CONTENT

3.1 Reporting Transgressions under City Laws

Non-compliance with or an offence under the Laws (**Transgression**) is generally brought to the City's attention by either a complaint from a member of the community, some other external party (e.g a government agency) or through City officers' investigations. When investigating an alleged or presumed Transgression it must first be established whether the City is the responsible authority for enforcing the relevant Law. If not, the alleged or presumed Transgression should be referred to the responsible authority.

3.2 Characterising Transgressions

Where the City is the responsible authority for enforcing a Transgression it shall be assessed by the City against the following considerations to determine the character of the Transgression:

- (a) public interest
- (b) threat to or impact on:
 - (i) public health and safety
 - (ii) environment
 - (iii) amenity
 - (iv) public or private property
- (c) rule of law
- (d) deterrence
- (e) need for punishment
- (f) other relevant legislative objectives

If a Transgression is characterised such that it warrants the City's further response/attention, further factors may be considered, including but not limited to:

- (g) whether the Transgression was committed deliberately or accidentally;
- (h) the seriousness and the type of the Transgression;
- (i) any prior convictions or demonstrated history of non-compliance relevant to the Transgression;
- (j) length of time since the Transgression;
- (k) the statutory timeframes relating to the relevant legislation;
- (l) any ongoing impacts resulting from the Transgression; and
- (m) any mitigating or aggravating circumstances.

Last updated

3.3 Enforcement/compliance action

Prosecution is an enforcement tool that will be employed where it is the appropriate response to a particular circumstance and is not an enforcement option to be applied only as a last resort.

Decisions on enforcement action will be taken in a timely fashion, notwithstanding that flexibility will be retained to be able to respond to additional information or changes in circumstance.

Where a Transgression warrants a response from the City, the City may, at its discretion, take any one or more of the following actions:

- (a) warning/caution letter reprimanding the offender in respect of the alleged Transgression;
- (b) infringement notice;
- (c) prosecution;
- (d) referring the matter to another authority with similar or higher jurisdiction; or
- (e) a negotiated other outcome

3.4 Recovery of legal costs

The City will seek to recover its fair and reasonable costs in all matters where costs are recoverable, either by consent or by order of the relevant court or tribunal.

3.5 Publication of convictions

To achieve the deterring objective of a prosecution (that is “justice must be seen to be done”), should a conviction result from a prosecuted Transgression then the City may publish a summary of the relevant details of the Transgression and conviction in such manner deemed fit by the City under the circumstances, which may include publishing details of such outcome on the City’s website or any other appropriate platform.

4. APPLICATION OF THE POLICY

This policy is provided for information purposes only to provide general guidance on how enforcement and prosecution of Transgressions is approached by the City. This policy:

- is not legally binding on the City, on any other organisations such as government departments, the police or individuals in the community;
- is general in nature and does not exhaustively address all the specific statutory actions, limitations and considerations that may be relevant or available under the Laws administered by the City;
- does not confine, restrain or limit the discretion of the City to take any action; and
- is not intended to constitute legal advice or to substitute or vary any legal processes.

Any person or entity affected by this policy or by any prosecution or compliance action undertaken by the City of Busselton should obtain independent legal advice in relation thereto.

Policy Background

Policy Reference No. - 015
Owner Unit – Legal Services
Originator – Legal Officer
Policy approved by – Council
Date Approved –

Review frequency - As required
Related Documents - Acts, Regulations and Local Laws administered by the City

History

Council Resolution	Date	Information
C1005/149	12 May, 2010	Date of implementation Version

6.4 REVIEW OF PRESENTATIONS ON TERMINATION POLICY

SUBJECT INDEX:	Employee Relations
STRATEGIC OBJECTIVE:	Accountable leadership that is supported by a skilled and professional workforce.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Human Resources
REPORTING OFFICER:	Manager Corporate Services - Sarah Pierson
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Presentations on Termination Policy track changes ↓ Attachment B Proposed Presentations on Termination Policy ↓

PRÉCIS

This report presents a revised Presentations on Termination Policy (Attachment B) for Council approval. The policy has been simplified and the values adjusted with respect to Council's contribution towards a departing gift. Proposed changes are shown in Attachment A. It is considered that the revised policy continues to reflect an appropriate level of recognition for employee's who are leaving the City's service.

BACKGROUND

The Presentations on Termination Policy has been utilised to recognise employee contributions for a long period of time. The current Presentations on Termination Policy was adopted in August 2012, with the policy being updated to provide a flat maximum amount that may be spent on recognising the departing member of staff. This was as opposed to a variable amount dependant on years of service.

This revision of the policy is presented as part of the ongoing review of Council policies to ensure their ongoing applicability and suitability.

In accordance with Section 5.50 of the Act, requiring a local government to prepare a policy in relation to payments upon termination, the revised Policy will require advertising once adopted.

STATUTORY ENVIRONMENT

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

Section 5.50 of the Act requires a local government to prepare a policy in relation to employees whose employment with the local government is finishing setting out the circumstances in which the local government will pay an employee an amount in addition to any amount to which the employee is entitled under a contract of employment or relevant award. A reference to a payment to a person under this section includes a reference to the conferral of any financial benefit on the person, and as such includes the provision of a contribution towards a gift. Once adopted local public notice of the policy will be required.

RELEVANT PLANS AND POLICIES

This report proposes the update of an existing policy of the Council. It is considered relevant to maintain a policy in this regard to ensure there are ceiling limits applied to any proposed departure gift or function. The proposed policy, while setting upper limits on the Council's contribution, enables

the CEO to determine the appropriate recognition within these parameters and, in doing so, to take into account other factors, such as the employee's full-time or part-time status, and the specific contribution of the employee with regard to the service provided to the City.

FINANCIAL IMPLICATIONS

There is a budget item provided for Council recognition of the contribution of employees which is utilised for the purposes of this policy. It is not expected that the revised policy will result in additional costs.

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The Presentations on Termination Policy is well regarded by employees as a form of recognising their contribution to the City. While it recognises employee contributions upon departure, it is considered to contribute to a level of goodwill and motivation for existing employees, in that their contributions are valued. To this end it supports Key Goal Area 6 of the Council's Strategic Community Plan 2017 – Leadership – and specifically Community Objective 6.3 – 'Accountable leadership that is supported by a skilled and professional workforce'.

RISK ASSESSMENT

The revised policy reduces the overall amount of money provided for gifts for departing employees, however, the adjusted amounts are considered appropriate and reasonable and therefore it is not considered that the revisions proposed pose any significant risk.

CONSULTATION

Nil

OFFICER COMMENT

The Presentations on Termination Policy has been utilised to recognise employee contributions upon departure for a long period of time. The current review process is intended to simplify the method of determining the maximum value for Council's contribution to a gift on leaving the City's employment.

It is considered that the revised Presentations on Termination Policy provides an adequate contribution to a gift and to a gathering for the purposes of recognising an employee who has voluntarily decided to leave the City of Busselton. The opportunity for colleagues to gather for this purpose, and for Council to provide the employee with a token of appreciation, creates a positive experience and should therefore be maintained.

CONCLUSION

It is recommended that Council adopt the proposed Presentations on Termination Policy as per Attachment B for the reasons outlined in this report.

OPTIONS

The Council may not agree with the revisions to the policy and may seek for the policy to be re-endorsed in its current format or for alternative changes to be made.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The proposed policy will be effective as of its adoption by Council.

OFFICER RECOMMENDATION

That the Council adopts the proposed Presentations on Termination Policy as per Attachment B.

Last updated 22 August 2012

171	Presentations on Termination	V2 Current
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1. PURPOSE

This policy is to provide a framework for recognising the contribution of employees of the City of Busselton when they voluntarily leave the employ of the City. The Council values the contribution ~~to the City~~ made by employees during their service, and views a gift and minor function to enable colleagues to farewell the departing employee as appropriate recognition.

2. SCOPE

The policy may be applied for employees voluntarily leaving the City of Busselton ~~with a fo have served~~ a minimum of two years employment.

3. POLICY CONTENT

It is appropriate that employees ~~who have provided exemplary service to the City of Busselton during their period of employment~~ are recognised for the contribution that they have made to the City of Busselton during their service ~~when voluntarily leaving the employ of the City.~~

Employees who have provided more than 2 years' service will be provided with a certificate of service. Additionally, The Chief Executive Officer, on behalf of the Council, is authorised to make a contribution towards a gift ~~for a departing employee of the City of Busselton,~~ up to the value outlined in the table below, ~~and subject to other employees contributing additional funds for the gift.~~

<u>Years of Service</u>	<u>Council Contribution</u>
<u>>2, ≤5 Years</u>	<u>\$50</u>
<u>>5, ≤15 Years</u>	<u>\$100</u>
<u>>15, ≤25 Years</u>	<u>\$200</u>
<u>>25 Years</u>	<u>\$350</u>

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<u>Years of Service</u>	<u>Council Contribution</u>
<u>>2, ≤3 Years</u>	<u>\$50</u>
<u>>3, ≤6 Years</u>	<u>\$100</u>
<u>>6, ≤7 Years</u>	<u>\$120</u>
<u>>7, ≤8 Years</u>	<u>\$140</u>
<u>>8, ≤9 Years</u>	<u>\$160</u>
<u>>9, ≤10 Years</u>	<u>\$180</u>
<u>>10, ≤11 Years</u>	<u>\$200</u>
<u>>11, ≤12 Years</u>	<u>\$225</u>
<u>>12, ≤13 Years</u>	<u>\$250</u>
<u>>13, ≤14 Years</u>	<u>\$275</u>
<u>>14, ≤15 Years</u>	<u>\$300</u>
<u>>15, ≤16 Years</u>	<u>\$325</u>
<u>>16, ≤17 Years</u>	<u>\$355</u>
<u>>17, ≤18 Years</u>	<u>\$385</u>
<u>>18, ≤19 Years</u>	<u>\$415</u>

Last updated 22 August 2012

>19, ≤20 Years	\$445
>20, ≤21 Years	\$475
>21, ≤22 Years	\$510
>22, ≤23 Years	\$545
>23, ≤24 Years	\$580
>24, ≤25 Years	\$615
>25, ≤26 Years	\$650
For Each Year of Service thereafter: \$35	

Gifts enabled under this policy ~~will generally may~~ be presented to the employee at a minor function authorised by the CEO for this purpose, to which other employees of the City of Busselton shall be invited. The Council contribution to an employee's function for this purpose is not to exceed \$200, ~~except where special circumstances apply. Where special circumstances apply the CEO may approve up to an additional \$200 for this purpose.~~
~~and wherever possible, i~~

If ~~two or more~~ employees depart the employ of the City at a similar time, one function shall ~~wherever possible~~ be held ~~to for several employees for achieve cost efficiencies.ectiveness.~~

4. APPLICATION OF THE POLICY

The policy shall be applied by Human Resources ~~and Governance staff~~, at the discretion of the Chief Executive Officer taking into consideration ~~whether the employee was employed on a full-time or part-time basis,~~ employment history of the employee, ~~and opportunities for the minor function to be combined for a number of departing employees.~~

Policy Background

Policy Reference No. - 171
Owner Unit – Human Resources
Originator – Historical
Policy approved by – Council
Date Approved – For consideration
Review Frequency – As required
Related Documents – N/A

History

Council Resolution	Date	Information
C1208/234	22 August, 2012	Reconsideration of function requirements Version 2
		Version 1

Last updated 22 August 2012

171	Presentations on Termination	V2 Current
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1. PURPOSE

This policy is to provide a framework for recognising the contribution of employees of the City of Busselton when they voluntarily leave the employ of the City. The Council values the contribution made by employees during their service, and views a gift and minor function to enable colleagues to farewell the departing employee as appropriate recognition.

2. SCOPE

The policy may be applied for employees voluntarily leaving the City of Busselton with a minimum of two years employment.

3. POLICY CONTENT

It is appropriate that employees are recognised for the contribution that they have made to the City of Busselton during their service.

Employees who have provided more than 2 years' service will be provided with a certificate of service. Additionally the Chief Executive Officer, on behalf of the Council, is authorised to make a contribution towards a gift up to the value outlined in the table below.

Years of Service	Council Contribution
>2, ≤5 Years	\$50
>5, ≤15 Years	\$100
>15, ≤25 Years	\$200
>25 Years	\$350

Gifts enabled under this policy will generally be presented to the employee at a minor function authorised by the CEO for this purpose, to which other employees of the City of Busselton shall be invited. The Council contribution to an employee's function for this purpose is not to exceed \$200, except where special circumstances apply. Where special circumstances apply the CEO may approve up to an additional \$200 for this purpose.

If two or more employees depart the employ of the City at a similar time, one function shall wherever possible be held to achieve cost efficiencies.

4. APPLICATION OF THE POLICY

The policy shall be applied by Human Resources, at the discretion of the Chief Executive Officer taking into consideration employment history of the employee..

Policy Background

Policy Reference No. - 171
Owner Unit – Human Resources
Originator – Historical

Last updated 22 August 2012

Policy approved by – Council
Date Approved – For consideration
Review Frequency – As required
Related Documents – N/A

History

Council Resolution	Date	Information
C1208/234	22 August, 2012	Reconsideration of function requirements Version 2
		Version 1

7. GENERAL DISCUSSION ITEMS

Policy 049 – Regional Price Preference

8. NEXT MEETING DATE

Thursday 17 August 2017

9. CLOSURE