Policy and Legislation Committee Agenda

16 February 2017

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city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 16 FEBRUARY 2017

TO: **THE MAYOR AND COUNCILLORS**

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the Meeting Room A, City Administration Site, Harris Road, Busselton on Thursday, 16 February 2017, commencing at 9.30am.

The attendance of Committee Members is respectfully requested.

MIKE ARCHER

CHIEF EXECUTIVE OFFICER

10 February 2017

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 16 FEBRUARY 2017

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1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

2. ATTENDANCE

Apologies

Approved Leave of Absence

3. PUBLIC QUESTION TIME

4. DISCLOSURE OF INTERESTS

5. CONFIRMATION OF MINUTES

5.1 Minutes of the Policy and Legislation Committee Meeting held 17 November 2016

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 17 November 2016 be confirmed as a true and correct record.

6. REPORTS

6.1 REVIEW OF PLANNING DELEGATIONS

SUBJECT INDEX:	Authorised Delegation of Power / Authority
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Planning and Development Services
ACTIVITY UNIT:	Statutory Planning
REPORTING OFFICER:	Director, Planning and Development Services - Paul Needham
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A Existing Delegations

PRÉCIS

The Council is asked to consider the outcomes of a review of planning delegations. Effective planning delegations, the intent and effect of which have remained broadly stable for at least the last five years, are a critical element in ensuring the efficient and effective operation of the City's planning service.

With the aim of presenting the delegations in a more user friendly and intuitive way, some changes to the format of the delegations are proposed. Specific changes to clarify and align 'call-in' and 'referral' provisions are also proposed. Also proposed are changes to clearly set out that development of policy instruments (local planning polices and heritage instruments) are not delegated, as well as changes to reflect the reporting and briefing mechanisms which currently support the delegations, but which are not currently specifically mentioned in the actual delegations.

BACKGROUND

At its ordinary meeting of 23 September 2015, the Council adopted new planning delegations, which are the planning delegations currently in effect. The Council decision at that time was necessitated by Gazettal of the *Planning and Development (Local Planning Scheme) Regulations 2015* ('the Regulations'), the result of which was a new head of power for most planning and planning-related delegations (the head of power was now set out in the Regulations, rather than in the City's own town planning scheme, as had previously been the case). At that time, however, there was not a substantive review of the delegations, in terms of their practical effect and intent; rather, the Council adopted a new set of delegations, the practical effect and intent of which was essentially unchanged relative to what had existed previously. A copy of the current delegations is provided at **Attachment A**.

Similarly, around 12 months earlier, on 24 September 2014, the Council had also adopted a new set of planning delegations, reflecting the then impending Gazettal of the City's new town planning scheme (Local Planning Scheme 21); that had also created a new head of power for most planning delegations (i.e. the then new, now current, scheme, Scheme 21, rather than the previous scheme, Scheme 20). Again, at that time, though, there was not a substantive review of the delegations, and what was adopted, in terms of practical effect and intent, was essentially unchanged from what had existed previously.

There had, however, been minor changes made to the planning delegations from time to time in the preceding years, as well as consideration of the planning delegations more generally as part of a broader review of delegations, subject of Council consideration in June 2011. At that time, no significant changes were made by the Council to the format, effect or intent of the planning delegations.

It should be noted that the planning legislation does not require the regular, periodic review of planning delegations, as is the case with delegations pursuant to the *Local Government Act 1995*, wherein S5.46(2) requires a review at least once every financial year. It is nevertheless seen as prudent to undertake a review of the planning and planning-related delegations from time to time to ensure their continued currency, workability and appropriateness, from a Council perspective. This report has been prepared and presented with that in mind. There have also been some changes in practice and context within the operations of the City administration itself, in terms of the working relationship between officers and Councillors and in the external environment, with respect to planning and planning-related matters since 2011; and consideration of the delegations in light of those changes is seen as appropriate.

Key changes since around the time of the 2011 review, other than the two changes to heads of power already described above, have been –

- The introduction of Development Assessment Panels (in the City's case, the South West Joint Development Assessment Panel – 'JDAP') by the State pursuant to the *Planning and Development (Development Assessment Panels) Regulations 2011*. The principal effect of that has been that some planning decisions that might otherwise have been made under delegated authority have instead been made by the JDAP – including by the two Councillor representatives on the JDAP (with the JDAP consisting of two Councillors and three independent representatives, appointed by the Minister) – and to a lesser degree that some decisions that might otherwise have been made by the Council have instead been made by the JDAP.
- The introduction of 'planning updates', generally on a monthly basis, as part of the informal briefing sessions with Councillors scheduled most Wednesday afternoons. Those updates have allowed officers to bring planning matters of potential interest to Councillors' attention, address matters raised by Councillors themselves, allow officers to indicate to Councillors the envisaged course of action with respect to various planning matters, and in particular to allow Councillors to identify matters that they would like to see brought to the Council for determination. The effect of that has been that some matters that would otherwise be determined under delegation are instead brought to the Council for determination. There are also instances, however, where a briefing on a matter satisfactorily addresses questions or concerns that Councillors may have, which at some times in the past may instead have been brought to the Council for determination. Most matters that are brought to the Council for determination are done so because it is identified that, because of the nature of the issues requiring consideration and/or the level of community interest, it is appropriate that the decision be made by the Council, rather than by officers.

It should be noted that, outside of the formal Council meeting process, the City's planning delegations outline mechanisms for 'referral' of matters to Councillors and/or for an ability for Councillors to 'call-in' matters, as follows –

- An *ability* for Councillors to call-in an application for development approval, with the current provisions allowing the Mayor, either independently or on the basis of a request from another Councillor (or Councillors), to make a request to the CEO that a matter be brought to the Council for determination.
- A *requirement* that any application for 'reconsideration' of a delegated decision on an application for development approval not be determined under delegated authority unless officers have first re-assessed the application (including in light of any changes to the proposal and/or new information). Officers then provide a memorandum to Councillors setting out the officer assessment of the matter and the proposed direction (i.e. support the reconsideration in full, support the reconsideration in part, or not support the reconsideration at all). Councillors are then provided seven days in which to

ask any further questions about the matter and/or request that the matter be brought to the Council for determination.

- An *ability* for officers to refer a draft structure plan (formerly development guide plan) or local development plan (formerly detailed area plan or detailed local area plan) to Councillors prior to the adoption of the draft plan as a 'draft for consultation'. Where this occurs, a report on the draft plan is prepared and referred to Councillors. Councillors are then provided 14 days in which to ask any further questions about the matter and/or request that the matter be brought to the Council for determination.
- A *requirement* for officers to refer a draft structure plan or local development plan to Councillors prior to the forwarding to the WAPC of a recommendation regarding the final adoption of the draft plan. Where this occurs, a report on the draft plan is prepared and referred to Councillors. Councillors are then provided 14 days in which to ask any further questions about the matter and/or request that the matter be brought to the Council for determination.

It should be noted that the call-in provisions allow Councillors to 'request' that a matter be brought to the Council for determination, but do not 'require' that occur. The reason for that is a delegation that 'required' a matter to be brought to the Council on the basis of a request from one (or more) Councillors would essentially constitute the withdrawal of a delegation by one (or more) Councillors, outside of a formal Council meeting. The only way that the Council can withdraw (or grant) a delegation, however, is via an absolute majority decision, in a formal Council meeting. Even if a delegation exists, though, officers can decide to instead to refer a matter to the Council for consideration.

It should be noted that whilst, on occasion, officers have sought to provide further information with the aim, in part, that a request be 'withdrawn', officers have never, at least within the last 4-5 years, not agreed to a request that a matter be brought to the Council for determination (where that request has been made in accordance with the protocol set out in the delegations at that particular time). Provided that an application is actually ready to be determined at the point (or just after the point) that the call-in provision is triggered, it would typically be 3-4 weeks before an application could be formally considered by the Council. Typically, that would be 1-4 weeks longer than would be required to make a decision under delegation.

It should be noted that Councillors always have the ability to use a 'notice-of-motion' to require that a particular matter be brought to the Council, if, when such a motion is put, it is supported by the Council as a whole (by absolute majority). There are a number of reasons, however, why reliance on that alone is not appropriate, principally related to timeframes. Clause 5.5 (2) of the City's *Standing Orders Local Law* requires that a Councillor provide a minimum of 21 days' notice before a notice of motion can be debated at a Council meeting. If a notice of motion is successful in requiring that a matter be brought to the Council for determination, officers would then have to prepare and present a report to a subsequent Council meeting. Given the lead times required, it would then be 2-5 weeks before the application could actually be considered by the Council (and potentially longer during December/January, or other times when there are breaks in the normal, twice monthly, Council meeting schedule). It would also often be difficult for the debate, if there was significant debate, to not become a proxy debate about the merits of the matter, rather than being about the decision making process.

Determination of an application called-in via the notice-of-motion process would therefore typically take 5-8 weeks, rather than the 3-4 weeks associated with the existing call-in provisions. Given that, it would generally be better for officers to simply present the application to the Council for consideration at the next available opportunity, more often than not rendering the notice-of-motion redundant, and ending up with an ultimate outcome more or less the same as that achieved via a more flexible call-in provision of the kind that currently exists.

In addition to the mechanisms outlined above that allow or require Councillors to be informed and updated about planning matters, or to exercise call-in provisions, the following regular updates are provided as part of the Councillors' Information Bulletin, which forms part of all ordinary Council meeting agendas –

- At each meeting, a report listing the applications received and determined by the City in the preceding period; and
- Generally at every second meeting (so, generally monthly), an update on planning and development related matters subject of State Administrative Tribunal (SAT) or legal proceedings.

It should also be noted that there are three important kinds of planning decisions where there is, in fact, no power of delegation and, as such, all such decisions are made by the Council itself, namely –

- Local government decisions about amendments to town planning schemes (i.e. 'amendments' or 'rezonings');
- Local government decisions relating to the adoption of planning strategies and/or planning policies; and
- Decisions to commence prosecution for non-compliance with the town planning scheme.

Also of note are the relationship of local government to the WAPC and Minister for Planning, and the respective roles of local governments, the WAPC and Minister for Planning, in relation to planning in Western Australia, notably –

- With limited exceptions related to Ministerial powers (powers which have never been exercised in relation to the City of Busselton), only the Council can commence the process of amending a town planning scheme (a decision referred to as the 'initiation' of an amendment). Subsequent to that point, though, the local government must process the amendment to the point where the local government's decision-making role generally ceases, which is the point at which the Council makes a recommendation about the amendment to the WAPC and Minister for Planning.
- In the case of applications for subdivision approval, applications are made not to the local government, but to the WAPC, which is the decision-making body, and the local government's role, in common with a range of State agencies, is important, but advisory only.
- Similarly, once a subdivision approval has been granted, usually a conditional subdivision approval, the local government's role in assessing compliance with conditions of subdivision approval is also important, but advisory only, in a legal/statutory sense.

Summary information regarding decisions on applications for development approval, including the breakdown between delegated, Council and the JDAP decisions, is included as **Attachment B**.

Unlike the reports presented to the Council in 2015 and 2014, in preparing this report officers have undertaken a substantive review of the delegations. With the aim of presenting the delegations in a more user friendly and intuitive way, some changes to the format of the delegations are proposed. Specific changes to clarify and align 'call-in' and 'referral' provisions are also proposed. Also proposed are changes to reflect the reporting and briefing mechanisms which currently support the delegations, but which are not currently specifically mentioned in the actual delegations.

STATUTORY ENVIRONMENT

The relevant statutory environment is set out in the -

- *Planning and Development Act 2005*

- *Planning and Development (Development Assessment Panels) Regulations 2011*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- *Local Government Act 1995*
- *City of Busselton Standing Orders Local Law 2010*

Of particular note are the thresholds for referral of applications for development approval to the JDAP (as set out in the *Planning and Development (Development Assessment Panels) Regulations 2011*), which are, in the case of everywhere in the State, other than the City of Perth, currently as follows –

- Mandatory DAP applications (i.e. those that must be determined by the JDAP) are -

  Any development application that —

  - *is not an excluded development application; and*
  - *is for the approval of development that has an estimated cost of $10 million or more.*

- Optional DAP applications (i.e. those that either the applicant or the local government can refer to the JDAP for determination) are -

  Any development application that —

  - *is not —*

    (i) an excluded development application; or

    (ii) a development application in respect of which the responsible authority has under regulation 19 delegated the power of determination; and

  - *is for the approval of development that has an estimated cost of $2 million or more and less than $10 million.*

Note that, under regulation 19, referred to above, a local government can, by absolute majority, delegate optional DAP applications to the JDAP. That can occur either on the basis of referring certain classes or types of applications, or on the basis of referring one or more particular applications. Officers are not proposing any optional delegation to the JDAP in this report.

Note that 'excluded development application' means a development application for approval of —

(a) construction of —

(i) a single house and any associated carport, patio, outbuilding and incidental development;

(ii) less than 10 grouped dwellings and any associated carport, patio, outbuilding and incidental development;

(iii) less than 10 multiple dwellings and any associated carport, patio, outbuilding and incidental development;

or

(b) development in an improvement scheme area (of which there are none in the City of Busselton); or

(c) development by a local government or the Commission; or

RELEVANT PLANS AND POLICIES

There are no relevant plans or policies.

FINANCIAL IMPLICATIONS

There are no significant financial implications of the recommendations of this report. It should be noted that any significant reduction in planning delegations, or other changes that resulted in a significant increase in the number of planning matters being brought to the Council for determination, would significantly increase the workload of the City's planning staff, and increase the effective cost and reduce the operational efficiency of that part of the City's operations.

Efficient planning (and building) assessment processes are also important to the economy of the District, with building and construction activity representing a significant proportion of the District's economy, and being a significant employer, with significant economic and employment multipliers. That is particularly the case when one considers the proportion of investment that is by people living outside the District and/or who intend to become residents of the District in future.

Long-term Financial Plan Implications

There are no significant Long Term Financial Plan implications of the recommendations of this report.

STRATEGIC COMMUNITY OBJECTIVES

The recommendations of this report reflect Strategic Objective 6.2 of the City's *Strategic Community Plan*, which is 'Governance systems that deliver responsible, ethical and accountable decision-making'.

RISK ASSESSMENT

An assessment of the risks associated with implementing the officer recommendation has been undertaken using the City's risk assessment framework. No significant risks have been identified.

CONSULTATION

It was not considered necessary to undertake consultation in the preparation of this report. Research was, however, undertaken, looking at the planning delegation approaches adopted by some other local governments.

OFFICER COMMENT

In the most recently completed financial year, the City determined 939 applications for development approval, as well as responding to 61 subdivision applications, receiving 49 subdivision clearance requests (for creation of 455 new lots), and assessing 19 structure plan, local development plan, developer contribution plan and/or town planning scheme amendment proposals. There have also been significant achievements in the broader strategic (town) planning area, including the making of a final recommendation to the WAPC on the City's draft Local Planning Strategy, setting the overall direction on the Strategic Land Review project and implementing/coordinating a range of other projects.

The overall level of activity is, however, substantially higher than was the case 4-5 years ago, and turnaround times for determining proposals have also generally improved over that period – but staffing levels have remained the same or, in some areas, actually decreased. That performance has only been possible because of a strong focus on the development and implementation of efficient systems, and building a positive and pro-active culture, with a 'continuous improvement' mindset. That change in performance is also reflective of the priority given to proactive and efficient planning assessment and, in particular, improved application turnaround times by the Council itself, reflected in CEO and organisational key performance indicators for the last 5-6 years.

Another critical factor in making that performance possible has been the current approach to planning delegations, supported by the developing and maintaining of a positive, productive working relationship between and amongst Councillors and officers – noting especially that a positive, productive working relationship does not entail universal agreement. In essence, that relationship rests on the fundamental understanding that officers, even when making delegated decisions, are acting on behalf of the Council, and that the continued maintenance of delegations requires Councillors to be confident in the soundness of the decisions being made by officers. Any significant increase the proportion of planning matters being considered by the Council would, however, as already in the 'Financial Implications' section of this report, significantly increase the workload of the City's planning staff, and increase the effective cost and reduce the operational efficiency of that part of the City's operations.

Overall, the best approach to planning delegations is seen as being through broad delegations, whilst ensuring that mechanisms exist to identify issues/matters of interest as early as possible and, for the hopefully limited number of situations where they need to be exercised, that there are appropriate call-in provisions. Rigid, formulaic or legalistic approaches to limiting or defining delegation are generally not seen as appropriate, as they may well lead to matters having to be brought to the Council where Councillors are, in fact, comfortable with the direction being taken by officers, and where there are not significant/strategic issues requiring consideration and/or the level of community interest is not especially high. That would result in: additional costs to the organization (associated with the preparation and publication of agenda reports, and the Council meeting process itself); unnecessary, additional impositions on Councillors' time; and longer timeframes for the determination of applications, creating additional uncertainty and costs for applicants, and longer periods of uncertainty for those in the community also interested in the outcomes.

Rigid, formulaic or legalistic approaches may also result in officers not recognizing matters that, despite not triggering specific requirements for referral to the Council, are nevertheless significant/strategic matters and/or which are matters of significant community interest – and which should, at minimum, be brought to Councillors' attention. The thresholds for referral of applications to the Development Assessment Panels are an example of where rigid/formulaic/legalistic approaches do result in matters being referred 'up' (to the JDAP) which are not especially difficult or important. Whilst that approach is probably necessary in the context of the Development Assessment Panels (to the extent that one accepts their necessity in general), it is not necessary with respect to identification of matters to be referred 'up' to Council, where more flexible and interactive approaches can be employed, as has now been the case, with considerable success, for a number of years.

Given the above, whilst officers are recommending some reformatting of the delegations and some detailed changes, officers are not proposing any significant change in terms of the overall effect or intent of the planning delegations. The proposed reformatting is with the aim of presenting the delegations in a more user friendly and intuitive way, fostering a better and more consistent understanding of the planning delegation and decision-making processes more generally (amongst Councillors, officers, applicants and the community in general). In addition, there is an attempt to be more descriptive and direct in setting out how the decision-making processes actually work. That includes inserting references to the reporting and briefing mechanisms described in the 'Background' section of this report, which are important parts of the processes (and a critical part of developing and maintaining a positive, productive working relationship between and amongst Councillors and officers), but which are not actually mentioned in the delegations currently.

In addition to the proposed changes described above, some detailed changes to the substance of the delegations are also proposed. The changes proposed are related to the call-in provisions, and the provisions that require or allow referral of certain proposals to Councillors (via a report/memo) for some specified period before a delegated decision can be made – during which period, Councillors can exercise the call-in provision. It is proposed, in part reflecting a general discussion item at a Policy

& Legislation Committee meeting, that the call-in and referral provisions are aligned to be consistent across all of the relevant processes, as follows –

- Establishing that a call-in request must can be made by any two Councillors. The call-in provisions vary somewhat at present, with one only allowing the Mayor to make a request, and others allowing a request to be made by any individual Councillor. The reason for this proposed change is to both standardize the arrangements across the different processes, as well as ensuring that, if a matter is brought to the Council at Councillors' request, there is interest in the matter from more than one Councillor.
- Establishing that, where matters are specifically required to be referred to Councillors before a delegated decision can be made, that Councillors will always be given 14 days in which to respond. At present the timeframe is seven days for applications for reconsideration of a delegated decision on an application for development approval, and 14 days for a draft structure plan or local development plan. The reason for this change is again to standardize the arrangements across the different processes, but also to recognize that, given other workload and commitments, a 14 day timeframe significantly reduces the chance that a Councillor may not, within the timeframe allowed, be able to review the material provided by officers, ask for (and receive) further information or clarification if required, and then seek the support of a fellow Councillor if they wish to make a call-in request.

Further changes to the call-in and referral provisions are also proposed, as follows –

- Clarifying that, even though it is not possible to submit an application to amend or renew an application that has been refused, and therefore not possible to 'reconsider' such an application, that where a new application, which is substantially the same as an earlier application refused under delegation, that such an application shall be treated in the same as a reconsideration application related to reconsideration of conditions of approval, and not determined under delegated authority without the matter being referred to Councillors.
- Clarifying that, because of changes to the nature of the decision now being made by a local government prior to advertising a draft structure plan or local development plan, that such draft plans shall generally not be referred to Councillors prior to the making of a delegated decision. Councillors should note that the decision made at that stage of the process is now subject, in a statutory sense, of some fairly tight timeframes (the decision must be within 28 days for a draft structure plan and 14 days for a draft local development plan) and is essentially about assessing whether relevant supporting information has been provided, not assessing the planning merits of the proposal. Note that, to date, most such applications have been preceded by significant pre-application contact between the applicants and City officers, and most applicants would prefer not to have proposals advertised where there is a strong likelihood that the local government will recommend significant changes post-advertising, possibly resulting in the WAPC requiring the proposal to be re-advertised.

Under the current delegations, it is arguable that powers to adopt or amend local planning policies and/or amend the local heritage list can be made under delegation. That is not seen as appropriate and the proposed delegations are clear in not delegating those kinds of decisions.

The proposed new delegations are set out in the Officer Recommendation.

CONCLUSION

The proposed new planning delegations are considered to provide for an appropriate level of delegation, ensuring the continued efficient operation of the City's planning service, whilst also ensuring that matters of strategic importance and/or significant community interest are identified and brought to the Council for determination where appropriate. The proposed new delegations are also considered to be set out in a more user friendly and intuitive way, fostering a better and more consistent understanding of the planning delegation and decision-making processes more generally.

OPTIONS

The Council could decide to retain the existing delegations in unchanged form and/or make other changes to the delegations.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the officer recommendation would involve the drafting and establishing of appropriate sub-delegations from the CEO to other City staff as necessary, with that process to be complete within one month. Because of the need to establish sub-delegations before existing sub-delegations fall away, it is recommended that the new delegations only come into effect after one month, with the existing delegations remaining in place during that time.

OFFICER RECOMMENDATION

ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED

That the Council, effective from 14 January 2017 -

1. Discontinue existing delegation reference PDR1; and

2. Establish new delegation reference PDR1, as follows –

INSTRUMENT OF DELEGATION

Del Ref No	Act Ref	Delegate	Delegation Subject
PDR 1	s.162 Planning and Development Act 2005 cl. 82 Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 *Deemed Provisions for local planning schemes*	Chief Executive Officer	Development Control

Delegator

Council.

Power/Duty

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

Conditions

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

1. 'Call-in' provisions

Any two or more Councillors may consider an application or proposal to be of strategic significance and/or high community interest and *request* the CEO, in writing, to present the

application or proposal to the Council for consideration. If the request is supported, the application shall be presented to the first practicable Council meeting for consideration.

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

2. Reconsideration of applications for development approval

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

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

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

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

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

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

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

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

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

Where the original decision was made by the Council, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* shall be presented to the Council for consideration, unless officers have briefed Councillors and Councillors have indicated a general willingness to allow the decision to be made under delegation, in which case a decision may be made under delegation, provided that the reconsideration provisions set out at Condition 2 above have been met before the decision is made.

6. Briefing and reporting

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

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

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

Verification

Council Resolution ##########

Review Requirements

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

Review Dates

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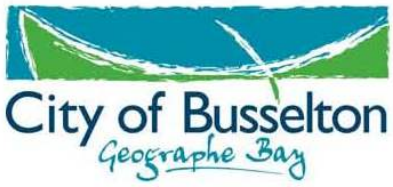

INSTRUMENT OF DELEGATION

Del Ref No	Act Ref	Delegate	Delegation Subject
PDR 1	s.162 Planning and Development Act 2005 cl. 82 Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 *Deemed Provisions for local planning schemes* cl. 12.2 City of Busselton Local (Town) Planning Scheme 21	Chief Executive Officer	**Development Control**

Delegator

Council.

Power/Duty

To undertake the powers and duties of local government under cl. 82 Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 *Deemed Provisions for local planning schemes* and cl 12.2 of the City of Busselton Local (Town) Planning Scheme 21, subject to the following *Exemptions, Limitation* and *Conditions.*

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 162 of the *Planning and Development Act 2005*;
- Clause. 82 Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 *Deemed Provisions for local planning schemes* and
- Clause 12.2 in the City of Busselton Local (Town) Planning Scheme 21.

Planning and Development Act 2005

162. No development except with approval

(1) subject to this act, where a planning scheme or interim development order provides that development referred to in the planning scheme or interim development order is not to be commenced or carried out without approval being obtained upon the making of a development application, a person must not commence or carry out that development on land to which the planning scheme or interim development order applies unless —

1.	(a) the approval has been obtained and is in force under the planning scheme or interim development order; and
2.	(b) the development is carried out in accordance with the conditions subject to which the approval was granted.

Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 Deemed Provisions for local planning schemes

82. Delegations by local government

(1) The local government may, by resolution, delegate to a committee or to the local government CEO the exercise of any of the local government's powers or the discharge of any of the local government's duties under this Scheme other than this power of delegation.

(2) A resolution referred to in subclause (1) must be by absolute majority of the council of the local government.

(3) The delegation must be in writing and may be general or as otherwise provided in the instrument of delegation.

83. Local government CEO may delegate powers

(1) The local government CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's functions under this Scheme other than this power of delegation.

(2) A delegation under this clause must be in writing and may be general or as otherwise provided in the instrument of delegation.

(3) Subject to any conditions imposed by the local government on its delegation to the local government CEO under clause 82, this clause extends to a power or duty the exercise or discharge of which has been delegated by the local government to the CEO under that clause.

City of Busselton Local (Town) Planning Scheme 21

12.2	**Delegation of Functions**
12.2.1	The local government may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee, the Chief Executive Officer (CEO), within the meaning of those expressions under the *Local Government Act 1995*, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.
12.2.2	The CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 12.2.1.
12.2.3	The exercise of the power of delegation under clause 12.2.1 requires a decision of an absolute majority as if the power had been exercised under the *Local Government Act 1995*.

Exemptions

The following items, are exempted from the affect of this delegation and are matters in the *Description* to be determined by Council, or as required by *Conditions* to be determined by Council.

Schedule 2	Scheme 21 clause	Description	Conditions
	2.1	Initiate preparation or amendment of a local (planning) policy.	Nil
4.1		Initiate preparation or amendment of a local (planning) policy and forward to the WAPC	
	2.2.3	Adopt a local (planning) policy and determine to forward to WAPC (2.3.3 (b)).	Nil
4.3		Resolves to proceed/adopt a local (planning) policy	

Schedule 2	Scheme 21 clause	Description	Conditions
6	2.4	Determine to revoke a local (planning) policy	Nil
	4.14	Termination of a non-conforming use	Nil
	7.4.10	Determine to adopt a Structure Plan and determine, if it affects subdivision, to forward it to WAPC for endorsement	Nil
19(1)		Structure Plans - consider submissions - *does not include 29(3) minor amendments*	2
20(2)(e)		Structure Plans - make report and recommendations to the WAPC - *does not include 29(3) minor amendments condition 2 applies*	2
35(1)		Activity Centre Plan- consider submissions - *does not include 45(3) minor amendments condition 2 applies*	2
36(2)(e)		Activity Centre Plan - make report and recommendations to the WAPC - *does not include 45(3) minor amendments condition 2 applies*	2
51		Local Development Plan- consider submissions - *does not include 59(4) minor amendments condition 2 applies*	2
52(1)		Local Development Plan determination *does not include 59(4) minor amendments condition 2 applies*	2
	7.7.6	Adopt a Developer contribution plan and determine if affecting subdivision to forward to WAPC for endorsement	Nil
8.3	8.1.1	Identify places and establish a Heritage List, advise the Heritage Council of Western Australia 8.1.4	Nil
8.4	8.1.6	Remove or modify the entry of a place on the heritage list	Nil
9	8.2.1	Designate a Heritage Area, advise the Heritage Council of Western Australia 8.2.6	Nil
10	8.3	Enter in to heritage agreement about land or building with agreement of the owner	Nil.
60(a)	11.3	Determination of Applications	1.1 & 1.2
	11.10	Reviews (SAT). Upon being invited by the Tribunal to reconsider a decision to either affirm, vary, or substitute a new decision	1.3
	12.1.1(b)	Determine to acquire land or buildings	Nil
	12.1.1(c)	Determine to dispose of land	Nil
	12.4	Determination of compensation for injurious affection	Nil
	12.5	Determine the purchase or the taking of land	Nil

Limitations

1. Application for the subdivision of land (WAPC), but all other powers and duties of local government leading to the determination by the WAPC are delegated including the power to impose Council's accepted Standards Specifications and Financial Contributions relating to subdivision.

2. Application for determination by the JDAP, but all other powers and duties of local government leading to the determination by the J DAP are delegated.

Conditions

1. Determination of applications

1.1 Call ins

a. The CEO may determine an item to be of significance or public interest and refer the matter for Council's determination.

b. The Mayor may consider an item is of significance or public interest and *request* the CEO, in writing, to refer it for Council's determination.

1.2 Reconsiderations

Prior to the determination of an application for reconsideration the CEO shall ensure that a copy of the reconsideration request, together with a delegated Officers report and Recommendation, is circulated to all Councillors, giving a period of not less than **seven (7)** days for any Councillor to *request* the reconsideration be referred for Council's determination.

A Councillor's *request* is to be made in writing to the CEO.

Any *request* will cause the matter to be submitted to the first practicable Council meeting for debate and determination.

If no *request* is received, within the time provided, the matter will proceed to be determined as Recommended in the Officer's report.

1.3 SAT Reviews

a. The CEO may determine a Tribunal request, to reconsider a decision, is of significance or public interest and refer the matter for Council's determination.

2. Minor Amendments - Structure Plan, Activity Centre Plan, and Local Development Plans

The CEO may refer minor amendments to Council determination, or otherwise is delegated to make a determination once having completed the following procedure.

Prior to determining any application or amendment, for adoption or endorsement of a Development Guide Plan and/or Detailed (Local) Area Plan the CEO shall ensure that a copy of the respective Plan, together with a delegated Officers report and Recommendation, is circulated to all Councillors, giving a period of not less than **fourteen (14)** days for any Councillor to *request* it be referred for Council's determination.

A Councillor's *request* is to be made by notice in writing to the CEO.

Any *request* will cause the matter to be submitted to the first practicable Council meeting for determination.

If no *request* is received, within the time provided, the matter will proceed to be determined as recommended in the officer report.

Verification

Council Resolution
##########

Review Requirements

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

Review Dates

######## 2015

6.2 REVIEW OF POLICY 229 - ELECTED MEMBERS MAIL HANDLING

SUBJECT INDEX:	Mail Handling
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Information Services
ACTIVITY UNIT:	Records
REPORTING OFFICER:	Manager, Information Services - Hendrik Boshoff
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Policy 229 Eleceted Members Mail Handling showing tracked changes
	Attachment B Revised Policy 229 - Elected Members Mail Handling

PRÉCIS

As part of the Council's ongoing policy review process the Elected Members Mail Handling Policy – Policy 229 is presented for review and updating to the current policy format. The review also lines up with the City's recent review of the City's Record Keeping Plan, which flagged this policy as requiring updating.

BACKGROUND

As part of the requirement under the State Records Act 2000 officers have reviewed the City's Record Keeping Plan and submitted the review results to State Records Office (SRO), which was approved by the State Records Commission at its meeting of 12 August 2016. One of the recommendations identified by officers and endorsed by the Commission is the requirement to review City of Busselton Council Policy 229 – Elected Members Mail Handling.

Council adopted the policy 10 March 2004 and it has not been reviewed since. This report documents the review of the policy. With changes recommended to the management of Elected Members Mail, in particular the mail handling guideline section has been updated to aid Councillors and officers to streamline the management of Elected Members corporate communications, as described in the State Records Act 2000:

> *Local governments must ensure that appropriate practices are established to facilitate the ease of capture and management of elected members' records up to and including the decision making processes of Council*

STATUTORY ENVIRONMENT

This report proposes updates of Council Policy 229 Elected Members Mail Handling, which operates under the State Records Act 2000. Furthermore, in accordance with Section 2.7(2)(b) of the Local Government Act 1995 it is the role of the Council to determine the Local Government's policies. The Council has proposed to do this on recommendation of a Committee it has established in accordance with Section 5.8 of the Act

RELEVANT PLANS AND POLICIES

The Policy forms part of the City of Busselton's Record Keeping Plan as approved by the State Records Commission at its regular meeting of 12 August 2016.

FINANCIAL IMPLICATIONS

NIL

Long-term Financial Plan Implications

NIL

STRATEGIC COMMUNITY OBJECTIVES

The ongoing policy review process is part of the City's governance systems, which ensure responsible, ethical and accountable decision-making.

As the policy provides guidance for Council and the City about customer service expectations, the policy aligns with Council's Strategic Priority Key Goal Area 6:

> "Open and Collaborative Leadership"

and more specifically with the Community Objective 6.3:

> "An organisation that is managed effectively and achieves positive outcomes for the community".

RISK ASSESSMENT

Not required for this review of this Council policy.

CONSULTATION

As part of the review of the City's Record Keeping Plan officers consulted extensively with internal stakeholders and the State Records Office, to ensure the City's Record Keeping Plan and the Elected Members Mail Handling Policy is in keeping with the State Records Act 2000, whilst ensuring the City's corporate records are functional and usable by the City administration. The proposed changes were presented to Councilors at a Council briefing session on 16 November 2016, at which time officers explained the proposed mail handling process and what Elected Member's responsibilities under the State Records Act 2000 are.

OFFICER COMMENT

This report presents the review of the Elected Members Mail Handling Policy, which aligned with the City's review of the Record Keeping Plan as required by the State Records Commission (reviewed every five years). As technology has significantly improved from the original adoption of the Policy in 2004 and there are currently more digital record keeping avenues available; officers reviewed the management of each of these avenues. It was found the use of a quick lookup table would be the easiest way to reflect the various actions as it relates to each mail management mechanism.

Therefore, the most significant change to the Policy was the inclusion of a Mail Handling Guidelines lookup table, detailing the correspondence type and the subsequent actions to be taken. In addition to the easy lookup table, officers included the State Records Office Information sheet for Elected Members to utilise as a guide in determining if a piece of correspondence is indeed a City corporate record or not.

CONCLUSION

It is the considered view of officers making these changes to simplify the mail management process, which will assist both Councilors and officers in the management of the Elected Members correspondence, will ensure compliance with the State Records Act 2000 as detailed in the City's Record Keeping Plan.

OPTIONS

The Council could choose not to change the policy or to make additional changes to the policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The policy amendments will be effective immediately upon adoption by the Council.

OFFICER RECOMMENDATION

That the Council adopts the revised Council Policy 229 – Elected Members Mail Handling as shown in Attachment B.

6.2 Attachment A Policy 229 Eleceted Members Mail Handling showing tracked changes

229	Elected Members Mail Handling	Current

PURPOSE

The purpose of these guidelines is to assist elected members to manage the official records created or received by them in the course of their role as an elected member and to comply with their responsibilities under the State Records Act 2000.

RECORDKEEPING PRINCIPLES

Accurately created and maintained records are important, and necessary, because they serve as a history of the transactions and business processes of local government. They are a fundamental tool for providing evidence of local government accountability and responsibility. It is for these reasons that legislation exists to ensure that the government record is properly maintained and preserved for future generations.

DEFINITIONS

Government organisation employee means –

(a) a person who, whether or not an employee, alone or with others governs, controls or manages a government organisation;
(b) a person who, under the Public Sector Management Act 1994, is a public service officer of a government organisation; or
(c) a person who is engaged by a government organisation, whether under a contract for services or otherwise and includes, in the case of a government organisation referred to in item 5 or 6 of Schedule 1, a ministerial officer (as defined in the Public Sector Management Act 1994) assisting the organisation. (State Records Act 2000)

Government record – is a record created or received by or for a government organisation or a government organisation employee or contractor in the course of the work for the organisation (State Records Act 2000).

Record – means any record of information however recorded and includes:

* anything on which there is writing or Braille;
* a map, plan, diagram or graph;
* a drawing, pictorial or graphic work, or photograph;
* anything on which there are figures, marks, perforations, or symbols, having a meaning for persons qualified to interpret them;
* anything from which images, sounds or writings can be reproduced with or without the aid of anything else; and
* anything on which information has been stored or recorded, either mechanically, magnetically, or electronically (State Records Act 2000).

APPLICABILITY OF THE STATE RECORDS ACT TO ELECTED MEMBERS

It is the view of the Crown Solicitor's Office that although elected members are not employees, they are clearly persons who govern, control and manage the local government in accordance with the Local Government Act 1995.

Therefore, elected members fall under the definition of the term "government organisation employee" as outlined in section 3 of the State Records Act 2000. "Accordingly, records created or received by {elected members} in the course of their capacity as office holders for the local government constitute government records."

The State Records Commission's policy for recordkeeping requirements for local government elected members is as follows:

"In relation to the recordkeeping requirements of local government elected members, records must be created and kept which properly and adequately record the performance of member functions arising from their participation in the decision making processes of Council and Committees of Council.

This requirement should be met through the creation and retention of records of meetings of Council and Committees of Council of local government and other communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business.

Local governments must ensure that appropriate practices are established to facilitate the ease of capture and management of elected members' records up to and including the decision making processes of Council"

ELECTED MEMBERS' RECORDS

Elected Members must create and keep records of communications or transactions, which convey information relating to local government business or functions. These records should be forwarded to the local government for capture into the official recordkeeping system.

Records may include any correspondence received or sent by elected members in any format (e.g. by post, fax, email, courier, hand-delivered) whether received or sent at the City offices or at an elected member's private residence / post box.

Records created or received by elected members can be divided into two broad groups – those of continuing value to the local government and those of temporary value.

Records of continuing value

These are those records which contain information that is of administrative, legal, evidential, fiscal or historical value to the local government. These records may be referred to for many purposes, including the need to:

* document elected members' decisions, directives, reasons and actions;
* check an interpretation of the local government policy or the rationale behind it;
* check the facts on a particular case or provide information;
* monitor progress and coordination of responses to issues; and
* document formal communications.

Records of temporary value

These are those records which have no continuing value and are considered of interest or used for a short time only, for example, a few hours or a few days.

HOW TO DEAL WITH SPECIFIC KINDS OF RECORDS

To assist elected members' to handle the records created and/or received, the following descriptions and actions relate to some common records with which they may deal.

1. Diaries / Appointment Books / Calendars

Diaries, appointment books and calendars are generally used to record appointments. They may also be used to record messages and notes, some of which may only be an aide memoire of a routine nature, and some of which may be of significance to the conduct of local government business.

Guidelines

Elected members' diaries, appointment books and calendars that are used to record information such as dates and times of meetings and appointments or to record notes and messages generally, have NO continuing value and may be destroyed when reference to them ceases. However, it is a matter of discretion to be judged by the elected member based on whether the information is:

- relevant;
- worthy of retention; and
- has not already been recorded elsewhere in the recordkeeping system.

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2. Telephone and other verbal conversations

Elected members may have telephone or face-to-face conversations at any time on a variety of matters. Some conversations may involve the relay of information, or involve matters, of significance to the conduct of local government business. These conversations should be documented in an appropriate format.

Other conversations may only be very basic or routine in nature, such as the issuing or receiving of basic instructions or information, and need not be documented.

Guidelines

* Conversations involving the exchange of routine or simple administrative instructions or information; and

* Conversations that do not relate to the business functions of the local government if they are documented in a written or other form, have NO continuing value and may be destroyed when reference to them ceases.

* Conversations which relate to the business functions of the local government involving the issuing of directives, proposals, recommendations, definitions or interpretations from the elected member to another party or vice versa; and

* Conversations that are part of an actual business transaction itself, or have policy/procedure implications, or otherwise identified as being significant to the conduct of the local government's business if they are documented in a written or other form, may have continuing value and at the discretion of the elected member should be forwarded to Records for incorporation into the recordkeeping system.

3. Lobbying

Lobbying is the activity of ratepayers or members of the community attempting to influence the Council through representations to elected members, and may include one or more elected members lobbying other elected members.

Guidelines

Records, such as correspondence or petitions, relating to lobbying matters regardless of whether the lobbying itself is of local government or community interest may have continuing value and at the discretion of the elected member should be forwarded to Records for incorporation into the recordkeeping system.

4. Electioneering material

Electioneering material or records created or received by an elected member in regard to electioneering are private records of the elected member, and do not need to be forwarded to the local government office.

5. Agendas/minutes/information brochures

Notes that are written on Council Agendas, Council Minutes or Information Brochures and are considered relevant to the decision made by Council may have continuing value and at the discretion of the elected member should be forwarded to Records for incorporation into the recordkeeping system.

A copy of the notes can be provided to the elected member for their reference, if required.

6. Confidentialdocuments/records

If the elected member believes that some of the documentation forwarded to the City office for incorporation into the recordkeeping system is of a highly sensitive or confidential nature, the elected member should advise the local government to treat the information as confidential and restrict access to those records.

The State Records Office information sheet on how to handle elected members' records is attached for further assistance in determining which records should be captured in the City of Busselton recordkeeping system

7. Destruction of Records

All records should be returned to the City of Busselton Records Management Unit for authorised and legal destruction.

MAIL HANDLING GUIDELINES

Correspondence	Action
Hard copy mail addressed to Councillors and received via COB (Excludes Mayor)	→ Opened → Date stamped by Records → Registered → Tasked to Governance for distribution → Hard copy retained by Records to allow authorised disposal to occur
Hard copy mail addressed to Mayor	→ Opened → Date stamped by Records → Registered → Tasked to Governance Task List for distribution as appropriate → Hard copy retained by Records to allow authorised disposal to occur
Hard copy received directly by Councillors i.e. at home, meetings etc	→ Councillor to ~~F~~forward~~ed~~ to Records → Date stamped by Records → Registered → Tasked to Governance Task List for distribution as appropriate → Hard copy retained by Records to allow authorised disposal to occur
Emails received via city@busselton.wa.gov.au with Councillor name or cc to Councillors notation	→ Registered by Records → Task to Governance Task List for distribution as appropriate
Emails received via ~~councilors@busselton.wa.gov.au~~ councillors@busselton.wa.gov.au	→ Forwarded to Records for registering by the Executive Assistant to the Director Finance and Corporate Services ~~to Records for registering~~ (noting that all Directors will receive a copy of these emails)
Emails received by Councillors that constitute corporate records	~~Councillor refer to SRO Information Sheet for guidance~~ → Councillor to forward email to Records using city@busselton.wa.gov.au ~~with request to register**~~
Email responses from Councillors to incoming records	→ Councillor to include **cc** to relevant Governance officer to enable registration to occur This will ensure integrity of the email is maintained and allow capture of the relevant metadata etc
Hard copy responses from Councillors	→ Governance Officer to scan and register signed response prior to posting
Hard copy responses written on behalf of Councillors	→ Responsible Officer to scan and register signed response prior to posting

6.2	Attachment A	Policy 229 Eleceted Members Mail Handling showing tracked changes

~~* If the City Mayor does choose to reply to any given letter, then he/she will ensure that the relevant file number, etc, are quoted on the letter and that the usual procedures regarding copies of the letter for internal file purposes, etc are followed.~~

~~* If the Officer has not received advice from the City Mayor that the City Mayor wishes to reply to the letter, then the officer's reply should commence with the phrase, 'The City Mayor has requested that I respond to your correspondence dated.....'.~~

~~* The City Mayor must be provided with a photocopy of all replied issued under the above procedures.~~

6.2 Attachment A Policy 229 Eleceted Members Mail Handling showing tracked changes

Government of Western Australia
Department of Culture and the Arts
State Records Office of Western Australia

INFORMATION SHEET

State Records Office of Western Australia

Local Government Elected Members' Records:
Which records to capture?

The State Records Commission policy regarding the records of local government elected members requires the creation and retention of records of the:

> *"...communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business."*

This policy applies regardless of a record's format or where it was received.

Elected members **must** create and keep records of communications or transactions, which convey information relating to **local government business or functions**. These records should be forwarded to the local government administration for **capture into the official recordkeeping system**.

Which records should be captured?

YES – forward to your local government administration	NO – do not need to be forwarded to your local government
Communications from ratepayers, such as: • complaints & compliments; • correspondence concerning corporate matters; • submissions, petitions & lobbying; • information for Council's interest relating to local government business activity & functions.	**Duplicate copies** – of Council meeting agenda, minutes & papers.
Telephone, meetings & other verbal conversations – between an elected member and another party, regarding local government projects or business activities.	**Draft documents or working papers** – which are already captured at the local government.
Work diaries – containing information that may be significant to the conduct of the elected member on behalf of the local government.	**Publications** – such as newsletters, circulars and journals.
Presentations and speeches – delivered as part of an elected member's official duties.	**Invitations** – to community events where an elected member is *not* representing Council or the local government.
	Telephone, meetings & other verbal conversations which: • convey routine information only; **or** • do not relate to local government business or functions.
	Electioneering – or party political information.
	Personal records – not related to an elected member's official duties.

Destruction of records: return all records to the local government for authorized and legal destruction.

More information: contact your local government administration or
State Records Office of Western Australia
Tel: 9427 3661 or **Email:** sro@sro.wa.gov.au

October 2013

229	Elected Members Mail Handling	Current

PURPOSE

The purpose of these guidelines is to assist elected members to manage the official records created or received by them in the course of their role as an elected member and to comply with their responsibilities under the State Records Act 2000.

RECORDKEEPING PRINCIPLES

Accurately created and maintained records are important, and necessary, because they serve as a history of the transactions and business processes of local government. They are a fundamental tool for providing evidence of local government accountability and responsibility. It is for these reasons that legislation exists to ensure that the government record is properly maintained and preserved for future generations.

DEFINITIONS

Government organisation employee means –

(a) a person who, whether or not an employee, alone or with others governs, controls or manages a government organisation;
(b) a person who, under the Public Sector Management Act 1994, is a public service officer of a government organisation; or
(c) a person who is engaged by a government organisation, whether under a contract for services or otherwise and includes, in the case of a government organisation referred to in item 5 or 6 of Schedule 1, a ministerial officer (as defined in the Public Sector Management Act 1994) assisting the organisation. (State Records Act 2000)

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This requirement should be met through the creation and retention of records of meetings of Council and Committees of Council of local government and other communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business.

Local governments must ensure that appropriate practices are established to facilitate the ease of capture and management of elected members' records up to and including the decision making processes of Council"

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Records created or received by elected members can be divided into two broad groups – those of continuing value to the local government and those of temporary value.

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These are those records which contain information that is of administrative, legal, evidential, fiscal or historical value to the local government. These records may be referred to for many purposes, including the need to:

* document elected members' decisions, directives, reasons and actions;
* check an interpretation of the local government policy or the rationale behind it;
* check the facts on a particular case or provide information;
* monitor progress and coordination of responses to issues; and
* document formal communications.

Records of temporary value

These are those records which have no continuing value and are considered of interest or used for a short time only, for example, a few hours or a few days.

HOW TO DEAL WITH SPECIFIC KINDS OF RECORDS

To assist elected members' to handle the records created and/or received, the following descriptions and actions relate to some common records with which they may deal.

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Guidelines

Elected members' diaries, appointment books and calendars that are used to record information such as dates and times of meetings and appointments or to record notes and messages generally, have NO continuing value and may be destroyed when reference to them ceases. However, it is a matter of discretion to be judged by the elected member based on whether the information is:

relevant;
worthy of retention; and
has not already been recorded elsewhere in the recordkeeping system.

2. Telephone and other verbal conversations

Elected members may have telephone or face-to-face conversations at any time on a variety of matters. Some conversations may involve the relay of information, or involve matters, of significance to the conduct of local government business. These conversations should be documented in an appropriate format.

Other conversations may only be very basic or routine in nature, such as the issuing or receiving of basic instructions or information, and need not be documented.

Guidelines

* Conversations involving the exchange of routine or simple administrative instructions or information; and

* Conversations that do not relate to the business functions of the local government if they are documented in a written or other form, have NO continuing value and may be destroyed when reference to them ceases.

* Conversations which relate to the business functions of the local government involving the issuing of directives, proposals, recommendations, definitions or interpretations from the elected member to another party or vice versa; and

* Conversations that are part of an actual business transaction itself, or have policy/procedure implications, or otherwise identified as being significant to the conduct of the local government's business if they are documented in a written or other form, may have continuing value and at the discretion of the elected member should be forwarded to Records for incorporation into the recordkeeping system.

3. Lobbying

Lobbying is the activity of ratepayers or members of the community attempting to influence the Council through representations to elected members, and may include one or more elected members lobbying other elected members.

Guidelines

Records, such as correspondence or petitions, relating to lobbying matters regardless of whether the lobbying itself is of local government or community interest may have continuing value and at the discretion of the elected member should be forwarded to Records for incorporation into the recordkeeping system.

4. Electioneering material

Electioneering material or records created or received by an elected member in regard to electioneering are private records of the elected member, and do not need to be forwarded to the local government office.

5. Agendas/minutes/information brochures

Notes that are written on Council Agendas, Council Minutes or Information Brochures and are considered relevant to the decision made by Council may have continuing value and at the discretion of the elected member should be forwarded to Records for incorporation into the recordkeeping system.

A copy of the notes can be provided to the elected member for their reference, if required.

6. Confidential documents/records

If the elected member believes that some of the documentation forwarded to the City office for incorporation into the recordkeeping system is of a highly sensitive or confidential nature, the elected member should advise the local government to treat the information as confidential and restrict access to those records.

The State Records Office information sheet on how to handle elected members' records is attached for further assistance in determining which records should be captured in the City of Busselton recordkeeping system

7. Destruction of Records

All records should be returned to the City of Busselton Records Management Unit for authorised and legal destruction.

MAIL HANDLING GUIDELINES

Correspondence	Action
Hard copy mail addressed to Councillors and received via COB (Excludes Mayor)	→ Opened → Date stamped by Records → Registered → Tasked to Governance for distribution → Hard copy retained by Records to allow authorised disposal to occur
Hard copy mail addressed to Mayor	→ Opened → Date stamped by Records → Registered → Tasked to Governance Task List for distribution as appropriate → Hard copy retained by Records to allow authorised disposal to occur
Hard copy received directly by Councillors i.e. at home, meetings etc	→ Councillor to forward to Records → Date stamped by Records → Registered → Tasked to Governance Task List for distribution as appropriate → Hard copy retained by Records to allow authorised disposal to occur
Emails received via city@busselton.wa.gov.au with Councillor name or cc to Councillors notation	→ Registered by Records → Task to Governance Task List for distribution as appropriate
Emails received via councillors@busselton.wa.gov.au	→ Forwarded to Records for registering by the Executive Assistant to the Director Finance and Corporate Services (noting that all Directors will receive a copy of these emails)
Emails received by Councillors that constitute corporate records	→ Councillor to forward email to Records using city@busselton.wa.gov.au
Email responses from Councillors to incoming records	→ Councillor to include **cc** to relevant Governance officer to enable registration to occur This will ensure integrity of the email is maintained and allow capture of the relevant metadata etc
Hard copy responses from Councillors	→ Governance Officer to scan and register signed response prior to posting
Hard copy responses written on behalf of Councillors	→ Responsible Officer to scan and register signed response prior to posting

Government of Western Australia
Department of Culture and the Arts
State Records Office of Western Australia

INFORMATION SHEET

State Records Office of Western Australia

Local Government Elected Members' Records:
Which records to capture?

The State Records Commission policy regarding the records of local government elected members requires the creation and retention of records of the:

> *"...communications and transactions of elected members which constitute evidence affecting the accountability of the Council and the discharge of its business."*

This policy applies regardless of a record's format or where it was received.

Elected members **must** create and keep records of communications or transactions, which convey information relating to **local government business or functions**. These records should be forwarded to the local government administration for **capture into the official recordkeeping system**.

Which records should be captured?

YES – forward to your local government administration	NO – do not need to be forwarded to your local government
Communications from ratepayers, such as: • complaints & compliments; • correspondence concerning corporate matters; • submissions, petitions & lobbying; • information for Council's interest relating to local government business activity & functions.	**Duplicate copies** – of Council meeting agenda, minutes & papers.
Telephone, meetings & other verbal conversations – between an elected member and another party, regarding local government projects or business activities.	**Draft documents or working papers** – which are already captured at the local government.
Work diaries – containing information that may be significant to the conduct of the elected member on behalf of the local government.	**Publications** – such as newsletters, circulars and journals.
Presentations and speeches – delivered as part of an elected member's official duties.	**Invitations** – to community events where an elected member is ***not*** representing Council or the local government.
	Telephone, meetings & other verbal conversations which: • convey routine information only; or • do not relate to local government business or functions.
	Electioneering – or party political information.
	Personal records – not related to an elected member's official duties.

Destruction of records: return all records to the local government for authorized and legal destruction.

More information: contact your local government administration or
State Records Office of Western Australia
Tel: 9427 3661 or Email: sro@sro.wa.gov.au

October 2013

Policy Background

Policy Reference No. - 229
Owner Unit – Records
Originator – Records Coordinator
Policy approved by – Council
Date Approved – 10 March, 2004

History

Council Resolution	Date	Information
C0403/064	10 March, 2004	Date of implementation Version 1

6.3 BUILDING LISTS - THE SALE OF - FOR REVIEW

SUBJECT INDEX:	Community Policy
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Development Services and Policy
ACTIVITY UNIT:	Development Services and Policy
REPORTING OFFICER:	Manager, Development Services and Policy - Anthony Rowe
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Nil

PRÉCIS

To reaffirm the continued sale of the Building and Development List (Building Permits) for commercial purposes.

BACKGROUND

The City's consideration is sought to making the list of recent building approvals (Building and Development List (Building Permits)) available sale for commercial purposes.

The arrangement for a business to purchase the Building and Development List is of longstanding, excess of 20 years.

The City has 27 subscribers to the list. These are companies purchase the lists either annually ($272) or on a monthly basis ($46).

The City sends updated lists to subscribers on a monthly basis. The City earns approximately $6,000 from the sale of the list.

In addition to the commercial purchasers, the City also provides the same lists to the utility providers, ie Water Corporation, but this is provided at no charge.

The list contains:

- The applicants name – not the owner's
- The location
- The type of development
- The size/area of the building
- **The value of the development**

The City has not reviewed this policy since the Building Act, 2011, commenced operation in April 2012.

STATUTORY ENVIRONMENT

Building Act 2011

The most relevant legislation is the *Building Act, 2011*. At Section 129 of the Act it directs that the City must make the register of Building Permits available for public inspection during normal office hours.

Section 129 also provides a discretion to local government, that it may, on payment of a prescribed fee provide a copy of a *Register*. There is presently no prescribed fee, so in its absence a council can determine the charge.

Section 129 however, only refers only to an individual's request, it does not address the provision of the Register for commercial purposes.

This City has consulted the Building Commission. It has advised there is no restriction upon any council from distributing lists and setting a fee for that service.

RELEVANT PLANS AND POLICIES

Community Policy 039 Building and Development Lists

The Community Policy Building and Development Lists authorises that the register of Building and Development information (Building Permits) can be made available for commercial purposes at a charge set by the Council in its *Fees and Charges* schedule.

FINANCIAL IMPLICATIONS

Nil

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

Governance systems that deliver responsible, ethical, and accountable decision making.

RISK ASSESSMENT

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks as well.

A 'minor' reputational risk has been identified – the receipt of unsolicited mail. This is discussed in the *Officer Comment*, it is however a consequence Council's decision, it is not one applicable to a control/remedy.

CONSULTATION

Western Australian Building Commission.

The Building Commission has advised that a council can make its list of building permits approved, available for purchase at a fee set by the council.

Public Consultation is not required as part of the Review of this Community Policy.

OFFICER COMMENT

The City practice of making its building list available for sale is a longstanding one.

There is a statutory requirement to make the list available to the public for inspection by an individual but the *Building Act 2011* is silent about making the lists available beyond an individual enquiry.

Consultation with the Building Commission revealed the practice of selling lists is widespread and it is up to each council to determine the fee. Equally there is no compulsion upon a council to supply lists, or to charge for the supply of the list. The City could for instance make the list freely available and displayed on the City website.

The issues of potential concern are *privacy* and the facilitation of *unsolicited mail*.

Privacy

Owners may be concerned about their privacy. The intention for s129 however, is the list should be available to people other than the owner. Other people most likely to **inspect** the *Register* are neighbors and prospective purchasers checking that all structures are approved.
Those **purchasing** the list are only interested in the recent approvals as their interest is in selling their products.

There are however opportunities to reduce some of the privacy concerns that the owners may have.

The information provided from the *Register,* and provided for purchase, is already limited. It only identifies the development's location, the applicant/builder (not the owner), a broad description of the work, the value, and the building area. It does not include any building plans that might give rise to concern about security.

It is conceivable that the "value of works" in particular, may give rise for embarrassment for the owner.

Generally speaking an explicit identification of building value is not necessary because the building industry, that purchases the list, will have an expectation of the cost of a development from its application description, the building size and its location.

The value of the building work is not relevant to the Utility providers that are also provided with the list, the value of work is also not an essential requirement of the Register, pursuant to s.129.

There is no practical benefit in providing details of the 'value of works' to warrant the potential concern for privacy and anxiety that it might cause for some owners.

Un-solicited mail

The Building list has a value to a broad range of businesses who may be interested in 'direct mail' as a means to advance consideration of their services or products. Building lists have been made widely available for excess of 30 years.

Making the list commercially available means the property owner/occupiers will receive unsolicited mail and may be inconvenienced by it. This would occur regardless of whether the City charges for the list or makes it freely available.

The availability/refreshing the list on a monthly basis is considered to be an adequate frequency. The availability on an annual basis, as an alternative, would be too long; the purchasing decisions would mostly have been completed by the owner during this timeframe.

At this time electronic details about the owner are not available, so the promotions are usually made by hard copy to the 'Occupier' at the development address.

There has been a rapid advance in the way companies can now obtain information for marketing purposes. Over time these advances, through direct and indirect information, are expected to overtake the value of the City service in providing the Building lists.

In the meantime the City's Building list will remain a simple way of identifying potential customers for many small businesses in the Busselton area.

CONCLUSION

The City is required to keep a *Register* of building permits issued and obliged to supply a list of Building approvals to Utility providers.

The sale of the list has the benefit of offsetting the costs of preparing the list. Whilst maintaining a list is a straight forward process, it does rely on the City's investment in Information Technology systems to produce it. It is recommended that the City continue to make the list available for purchase, but that the current policy be modified as follows:

> "Community policy 039 – Building Permit lists
>
> A list of Building Permits issued by the City each month can be made available for commercial purposes, to be purchased at a fee determined annually by the City.
>
> The information to be provided will be limited to only the following items:
>
> - The applicants name
> - The location
> - The development floor area size
> - The type of development

Please note that the 'value' of works is not to be included in the contents of the list for the purpose of improving the privacy for the property owner.

OPTIONS

1. Support the Officer Recommendation – replace Community Policy 039, as per the *Officer Recommendation*
2. Delete Community Policy 039, and cease making the Building and Development List available for commercial services, and refund the proportion remaining on any current 12 month subscription.
3. Delete Community Policy 039 and make the City's Building Permit register available to view at the City's website (in addition to maintaining the copy for inspection at the City Offices) and refund the proportion remaining on any current 12 month subscription.
4. Retain Community Policy 039, subject to further amendment.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

To come into effect upon resolution of Council.

OFFICER RECOMMENDATION

ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED

That Council resolve to replace the Community Policy – *039 Building and development Lists*, with:

"Community policy 039 – Building Permit lists

A list of Building Permits issued by the City each month can be made available for commercial purposes, to be purchased at a fee determined annually by the City.

The information provided will be limited to only the following items

- The applicants name
- The location
- The development floor area size
- The type of development"

6.4 Salary Packaging Policy

SUBJECT INDEX:	Policy, Procedures and Manuals
STRATEGIC OBJECTIVE:	An organisation that is managed effectively and achieves positive outcomes for the community.
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 Salary Packaging Policy Attachment B Salary Packaging Policy - Track Changes

PRÉCIS

This report presents a revised Salary Packaging Policy (Attachment A) for Council approval, with the Policy having been simplified and more operational aspects moved into a new operational level practice and procedure.

Salary packaging is considered an effective attraction and retention tool and continuing to offer these benefits will assist the City in meetings its Workforce Planning strategy of "Retaining our staff through attractive remuneration, benefits and innovative practices".

BACKGROUND

In April 2012 Council endorsed a new Salary Packaging Policy which allowed City employees to salary package a number of benefits in addition to those that were available at the time (Superannuation, City uniforms and recreational facility fees). These additional benefits were Remote Area Rent, Living Away From Home Allowance and Novated Leasing of Vehicles (C1204/095). The policy provided that an external provider specialised in packaging arrangements administer these benefits. To this end the City has been working with Pay Plan for the past nearly five (5) years.

As part of the 2013 Enterprise Agreement negotiations staff requested that the City further look into the possibility of providing additional benefits that would allow them to access greater tax savings through a legitimate avenue. In particular employees with mortgages were seeking the ability to access remote area housing assistance. The City committed to further researching the options available noting its obligation to ensure that any benefits introduced could be effectively managed and did not pose a risk for the City.

As a result of this research Officers identified a number of additional benefits that could be offered, namely:

- Airline Lounge Membership
- Remote Area Housing Mortgage Interest
- Remote Area Domestic Energy

In August 2014 Council endorsed a revised Salary Packaging Policy which included the provision of these additional benefits (C1408/197). Living Away From Home Allowance however was removed on the basis that it had very limited availability to the City, with legislative changes having reduced this further since adoption of the policy in 2012.

The remote area benefits provided within the policy are available to employees by virtue of a portion of the City of Busselton and surrounding localities being considered a 'Remote Locality' by the ATO. Under the ATO's definition of 'remote area' a locality is considered remote if it is one of the following:

- At least 40 kms from an urban centre with a population of 14,000 or more
- At least 100 kms from an urban centre with a population of 130,000 or more

Remote area concessions can be utilised to offset the increased cost of living expense incurred by individuals living in a remote locality with Fringe Benefits Tax (FBT) exemptions / concessions for the City.

STATUTORY ENVIRONMENT

Salary packaging is a complex area of remuneration management and the Council must comply with the requirements of the Australian Taxation Office ("ATO") and relevant State and Federal taxation legislation and regulations associated with FBT and salary packaging.

Fringe Benefits Tax

Legally FBT is payable by the employer for any non-cash benefits provided to employees. There are however certain benefits which are classified as concessional or FBT exempt benefits. With the exception of novated lease motor vehicles, remote area housing for mortgages and remote area domestic energy, the benefits offered under the policy are FBT exempt. Remote area housing for mortgages and remote area domestic energy attract FBT on 50% of the value packaged. Under the current policy any FBT costs and / or related costs associated with the benefits are borne by the employee and factored into the packaging arrangement.

Fringe benefits provided to staff (whether salary packaged or not) are, unless exempt, required to be reported on a staff member's **Payment Summary** where the aggregate taxable value exceeds $2,000 per FBT year. Further it is the grossed-up value (i.e. multiplied by 1.9417) that is required to be shown on the Payment Summary. Whilst this amount will not be taxable income, it will be taken into account for the purposes of determining the application of certain surcharges, levies and Government entitlements, such as the additional Medicare levy and Family Tax Benefits. Employees need to be aware of this and seek their own financial advice prior to entering into any salary packaging arrangement.

Australian Taxation Office Requirements – Tax Compliance

Employees cannot claim a tax deduction on packaged benefits and are required to observe all standards set by the ATO regarding salary packaging. The standards require complete proof of expenditure and adherence to the employees nominated flexible remuneration. Regular requests for proof of expenditure are undertaken by the City's external salary packaging provider. Failure to observe these standards can result in ATO penalties for the employee.

RELEVANT PLANS AND POLICIES

The Salary Packaging Policy provides for improved employee benefits, and aids the City in achieving its Workforce Plan strategy of "Retaining our staff through attractive remuneration, benefits and innovative practices.

The aim of this policy revision is to simplify the policy and remove some of the operational level detail that is more suited to an operational practice and procedure. A Salary Packaging Operational Practice and Procedure (OPP) has been created to ensure we maintain clear parameters and controls for the application of salary packaging at the City.

FINANCIAL IMPLICATIONS

The revised policy has no additional financial implications. The cost of any associated fees and charges for each package arrangement (administrative or FBT) are borne by the employee.

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The Officers recommendation aligns with and supports the Council's Strategic Community Plan 2013 (review 2015), specifically Key Goal – "Open and Collaborative Leadership" and Community Objective 6.3 – "An organisation that is managed effectively and achieves positive outcomes for the community".

RISK ASSESSMENT

The revised policy does not materially change the City's position or offering in relation to salary packaging, and hence poses no risk.

A risk assessment was previously undertaken to assess potential risks associated with offering salary packaging benefits to employees, with the overall risk being assessed as low. In introducing the current range of benefits the City sought and received Tax Rulings from the ATO on various aspects and liaised extensively with its tax advisers.

The City, through its external administrator Pay-Plan, conducts a thorough assessment of eligibility prior to packaging benefits, with employees having to provide documentary evidence related to the benefit being claimed, for instance rental agreements in relation to remote area rent and mortgage settlement documents and loan statements in relation to remote area mortgage interest.

A Salary Packaging Agreement is also entered into between the City, Pay-Plan and the employee which contains obligations for the employee to comply with all ATO and declaration requirements.

CONSULTATION

No consultation has been done in relation to the revision of this policy, although Officers have checked with the ATO website to confirm that parts of the City are still considered a remote area.

OFFICER COMMENT

The revised policy presented does not materially change the City's position or offering in relation to salary packaging. The policy is simply being streamlined with more operational aspects removed and instead covered in a new OPP.

There are currently 36 employees who take advantage of the benefits offered through the policy with 33 packaging remote area rent, 1 remote area mortgage interest, 5 remote area domestic energy and 3 novated leasing a vehicle.

A brief overview of the salary packaging benefits available is provided below.

Work Related Items

Where used for **work purposes only,** and not provided by the City, the following items may be paid for from an employee's pre-tax salary:

- portable electronic devices (laptops, mobile phones and PDA's)
- protective clothing
- briefcase
- calculator
- computer software

Airline Lounge Membership

Employees can apply to salary package the cost of the following:

- Airline lounge membership joining fee
- Airline membership annual renewal fee

These membership fees are "tax free" when provided to an employee as part of a salary packaging arrangement.

Novated Leasing of Vehicles

Novated car leases for new or used cars may be packaged by employees. In entering into a novated lease, Council and an employee enter into an agreement with the financier whereby Council ensures repayments under the finance lease are made by deducting the repayment amount from the employee's salary. The employee owns the vehicle and has the right to take the vehicle with them should they leave employment of the City, with full responsibility for the vehicle passed on to the employee.

Remote Area Housing Rent

Rent - Employer Provided Housing

Council, at its discretion may agree to provide eligible employees with a Council owned or leased rental property as part of their package, and the employee may apply to salary package 100% of the rental value tax free.

Rent - Private Rentals

Employees renting privately (i.e. employees who have a rental agreement with a landlord or agency), within a Remote Area can apply to salary package 50% of their rental value tax free.

Remote Area Housing Mortgage Interest

Subject to qualifying criteria, employees with a mortgage on their home which is in a Remote Area can apply to salary package their interest expenses on the mortgage. The home must be their usual place of residence.

The employee receives reimbursement of 100% of their interest expenses paid. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

Remote Area Domestic Energy

Subject to qualifying criteria, employees who package remote area housing benefits can apply to salary package 100% of the value of the cost of their residential electricity and gas expenses. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package energy costs paid during the period of their employment with the City of Busselton and for the period that they are / have been claiming a remote housing benefit.

CONCLUSION

It is recommended that Council continue to support the Salary Packaging Policy in its revised form, with salary packaging a useful staff attraction and retention tool. An OPP has been developed to maintain the operational parameters that exist within the current policy.

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.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

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

OFFICER RECOMMENDATION

That the revised Salary Packaging Policy as shown in Attachment A be adopted.

Number	**Salary Packaging**	**Version 3**

1. PURPOSE

The objective of this policy is to provide the guiding document for the provision of various salary packaging options to eligible City of Busselton employees. Salary Packaging is primarily an attraction and retention tool and hence this policy aims to increase staff attraction and retention.

2. SCOPE

This policy applies to all full time, part time and fixed term employees (longer than 12 months duration), subject to meeting specific eligibility criteria relevant to the packaged benefit sought.

This Policy provides for the salary packaging of an Allowable Benefit as defined.

Definitions

Allowable Benefit The following range of Salary Packaging Benefits:

- Work Related Items – i.e. laptops, mobile phones
- Leisure Centre and Child Care Fees (at City operated premises only)
- Novated Leasing of Vehicles
- Remote Area Housing Benefit
  - Rental
  - Mortgage Interest

- Remote Area Domestic Energy
- Airline Lounge Membership

ATO	Australian Taxation Office
Base Cash Salary	Remuneration in accordance with relevant workplace agreement or contract of employment paid by way of regular periodic cash payments subject to PAYG tax. This does not include superannuation guarantee contributions.
Benefit	Any non-cash benefit and cash payment (other than Base Cash Salary) made or expected to be made for the benefit of the employee
Fringe Benefits Tax (FBT)	Tax payable by the City to the Government on some categories of benefits provided to employees
FBT Year	1 April to 31 March each year
PAYG	Pay As You Go taxation
Remote Area	An area which is one of the following: o At least 40 kms from an urban centre with a population of 14,000 or more o At least 100 kms from an urban centre with a population of 130,000 or more Note, not all of the City of Busselton district is classified as a Remote Area. A map showing the cut off is available in the City's Salary Packaging Guide.
Salary Packaging	An arrangement between an employee and employer whereby the employee elects to exchange Base Cash Salary for a Benefit but for the purposes of this Policy does not include superannuation.
Total Remuneration	Total package value assigned to the permanently occupied position that the employee is entitled to receive under an agreement or contract of employment with the City expressed as an annual sum.

3.0 POLICY CONTENT

Salary Packaging will be made available to employees as a benefit in accordance with City operational practices and procedures and in accordance with ATO legislation, rulings, and any other relevant legislation, as amended from time to time, but only to the extent of an Allowable Benefit as defined in this Policy.

Salary packages will be adjusted accordingly (within an employee's agreed Total Remuneration) to account for variations in a salary packaging arrangement, including variations in an Allowable Benefit, taxation, and scheme participation.

Salary Packaging arrangements will be administered at minimal financial cost to the City and where required by the CEO, by an external Salary Packaging provider approved by the City. As part of any Salary Packaging arrangement, the cost of administering the package (if applicable) is to be met by the participating employee.

Any Fringe Benefits Tax (FBT) or other tax liability is to be met by the participating employee.

All employees entering into a Salary Packaging arrangement must enter into an agreement appropriate to the type of Benefit. All employees must ensure compliance with the agreement entered into and all organisational practices and procedures, as amended from time to time.

It is an individual employee's responsibility to monitor packaging arrangements and to be aware of and responsible for any individual consequences of participating in an arrangement relating to an Allowable Benefit. The City strongly urges employees contemplating Salary Packaging to seek independent financial or other appropriate advice. Benefits of participation will vary according to individual circumstances and individual participation, therefore participation is a matter of individual employee decision, responsibility and risk.

3.1 Responsibilities:

Elected Members will:

-
- Adopt and review this policy on a periodic basis as required.

CEO will:

- Endorse and enforce all standards documented in this policy;
- Endorse and enforce operational Salary Packaging practices and procedures which include, but are not limited to:
    - Eligibility and participation criteria
    - Rules for application of Salary Packaging;
    - Processes and/or forms to ensure an effective, compliant scheme;
    - Information capture requirements;
    - Training requirements.
- Regularly review Salary Packaging opportunities to continuously identify opportunities for improved attraction and retention of staff.
- Establish mechanisms to monitor compliance with this policy;
- Establish processes to deal with instances of non-compliance to this policy or related operational practices and procedures.

3.2 Eligibility Criteria

Specific eligibility and participation criteria apply dependant on an employee's employment status at a point in time, and the Allowable Benefit provided. The City's operational practices and procedures detail criteria further to that outlined below.

<u>Work Related Items</u>

The following items, where used for **work purposes only** and not provided by the City, may be paid for from an employee's pre-tax salary:

- portable electronic devices (laptops, mobile phones and PDA's)
- protective clothing
- briefcase
- calculator
- computer software

There is a limit of one item per category per FBT year.

Novated Leasing of Vehicles

Novated car leases for new or used cars may be packaged by employees. A car classified as 'luxury' by the ATO cannot be salary packaged. Novated leases may not be entered into for City provided (fleet) vehicles.

In entering into a novated lease, Council and an employee will enter into an agreement with the financier whereby Council will ensure repayments under the finance lease are made by deducting the repayment amount from the employee's salary.

The employee will own the vehicle and has the right to take the vehicle with them should they leave employment of the City, with responsibility for the vehicle passed on to the employee.

Remote Area Housing

Eligible employees may salary package the following items under this Policy:

Rent - Employer Provided Housing

Council, at its discretion may agree to provide eligible employees with a Council owned or leased rental property as part of their package, and the employee may apply to salary package 100% of the rental value tax free by being paid part of their Total Remuneration as a non-taxable remote housing reimbursement. Their Base Cash Salary will be reduced accordingly.

Rent - Private Rentals

Employees renting privately (i.e. employees who have a rental agreement with a landlord or agency), within a Remote Area can apply to salary package 50% of their rental value tax free through being paid part of their Total Remuneration as a non-taxable remote housing reimbursement. Their Base Cash Salary will be reduced accordingly.

Mortgage Interest

Subject to qualifying criteria outlined in the City's operational practice and procedure, employees with a mortgage on their home which is in a Remote Area can apply to salary package their interest expenses on the mortgage. The home must be their usual place of residence.

The employee receives reimbursement of 100% of their interest expenses paid through being paid part of their Total Remuneration as a reimbursement. Their Base Cash Salary will be reduced accordingly. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package interest paid during the period of their employment with the City of Busselton and only from 1 July 2014 onwards.

Remote Area Domestic Energy

Subject to qualifying criteria outlined in the City's operational practice and procedure, employees who package remote area housing benefits can apply to salary package 100% of the value of the cost of their residential electricity and gas expenses tax free through being paid part of their Total Remuneration as a reimbursement. Their Base Cash Salary will be reduced accordingly. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package energy costs paid during the period of their employment with the City of Busselton and for the period that they are / have been claiming a remote housing benefit.

Airline Lounge Membership

Employees can apply to salary package the cost of the following:

- Airline lounge membership joining fee
- Airline membership annual renewal fee

Their Base Cash Salary will be reduced accordingly. These membership fees are "tax free" when provided to an employee as part of a Salary Packaging arrangement.

Membership fees to more than one airline lounge facility are permitted.

Frequent Flyer membership fees are not eligible for salary packaging as they do not give an entitlement to use an airline lounge facility.

Policy Background

Policy Reference No. -	
Owner Unit –	Employee Services & Risk
Originator –	Employee Services & Risk
Policy approved by –	Council
Date Approved -	For consideration
Date Reviewed -	As required
Related Documents	Salary Packaging Operational Practices, Procedures and Manuals Salary Packaging Agreement City of Busselton Enterprise Agreement 2014

History

Council Resolution	Date	Information
		Date of implementation Version 1
		Amended Policy to include Remote Area Mortgage Interest, Remote Area Domestic Energy, Airline Lounge Membership Version 2
		Amended Policy to streamline and simplify Version 3

Number	Salary Packaging	Version 3

1. PURPOSE

The objective of this policy is to provide the guiding document for the provision of various salary packaging options to eligible City of Busselton employees. Salary Packaging is primarily an attraction and retention tool and hence this policy aims to increase staff attraction and retention.

2. SCOPE

This policy applies to all full time, part time and fixed term employees (longer than 12 months duration), subject to meeting specific eligibility criteria relevant to the packaged benefit sought.

This Policy provides for the salary packaging of an Allowable Benefit as defined.

Definitions

Allowable Benefit

The following range of Salary Packaging Benefits:

- Work Related Items – i.e. laptops, mobile phones
- Leisure Centre and Child Care Fees (at City operated premises only)
- Novated Leasing of Vehicles
- Remote Area Housing Benefit
  - Rental
  - Mortgage Interest
- Remote Area Domestic Energy
- Airline Lounge Membership

ATO

Australian Taxation Office

Base Cash Salary

Remuneration in accordance with relevant workplace agreement or contract of employment paid by way of regular periodic cash payments subject to PAYG tax. This does not include superannuation guarantee contributions.

Benefit

Any non-cash benefit and cash payment (other than Base Cash Salary) made or expected to be made for the benefit of the employee

Fringe Benefits Tax (FBT)

Tax payable by the City to the Government on some categories of benefits provided to employees

FBT Year

1 April to 31 March each year

PAYG

Pay As You Go taxation

Remote Area

An area which is one of the following:

- At least 40 kms from an urban centre with a population of 14,000 or more
- At least 100 kms from an urban centre with a population of 130,000 or more

Note, not all of the City of Busselton district is classified as a Remote Area. A map showing the cut off is available in the City's Salary Packaging Guide.

Salary Packaging	An arrangement between an employee and employer whereby the employee elects to exchange Base Cash Salary for a Benefit but for the purposes of this Policy does not include superannuation.
Total Remuneration	Total package value assigned to the permanently occupied position that the employee is entitled to receive under an agreement or contract of employment with the City expressed as an annual sum.

3.0 POLICY CONTENT

Salary Packaging will be made available to employees as a benefit in accordance with City operational practices and procedures and in accordance with ATO legislation, rulings, and any other relevant legislation, as amended from time to time, but only to the extent of an Allowable Benefit as defined in this Policy.

Salary packages will be adjusted accordingly (within an employee's agreed Total Remuneration) to account for variations in a salary packaging arrangement, including variations in an Allowable Benefit, taxation, and scheme participation.

Salary Packaging arrangements will be administered at minimal financial cost to the City and where required by the CEO, by an external Salary Packaging provider approved by the City. As part of any Salary Packaging arrangement, the cost of administering the package (if applicable) is to be met by the participating employee.

Any Fringe Benefits Tax (FBT) or other tax liability is to be met by the participating employee.

All employees entering into a Salary Packaging arrangement must enter into an agreement appropriate to the type of Benefit. All employees must ensure compliance with the agreement entered into and all organisational practices and procedures, as amended from time to time.

It is an individual employee's responsibility to monitor packaging arrangements and to be aware of and responsible for any individual consequences of participating in an arrangement relating to an Allowable Benefit. The City strongly urges employees contemplating Salary Packaging to seek independent financial or other appropriate advice. Benefits of participation will vary according to individual circumstances and individual participation, therefore participation is a matter of individual employee decision, responsibility and risk.

3.1 Responsibilities:

Elected Members will:

-
- Adopt and review this policy on a periodic basis as required.

CEO will:

- Endorse and enforce all standards documented in this policy;
- Endorse and enforce operational Salary Packaging practices and procedures which include, but are not limited to:
    - Eligibility and participation criteria
    - Rules for application of Salary Packaging;
    - Processes and/or forms to ensure an effective, compliant scheme;
    - Information capture requirements;

  - Training requirements.
- Regularly review Salary Packaging opportunities to continuously identify opportunities for improved attraction and retention of staff.
- Establish mechanisms to monitor compliance with this policy;
- Establish processes to deal with instances of non-compliance to this policy or related operational practices and procedures.

3.2 Eligibility Criteria

Specific eligibility and participation criteria apply dependant on an employee's employment status at a point in time, and the Allowable Benefit provided. The City's operational practices and procedures detail criteria further to that outlined below.

Work Related Items

The following items, where used for **work purposes only** and not provided by the City, may be paid for from an employee's pre-tax salary:

- portable electronic devices (laptops, mobile phones and PDA's)
- protective clothing
- briefcase
- calculator
- computer software

There is a limit of one item per category per FBT year.

Novated Leasing of Vehicles

Novated car leases for new or used cars may be packaged by employees. A car classified as 'luxury' by the ATO cannot be salary packaged. Novated leases may not be entered into for City provided (fleet) vehicles.

In entering into a novated lease, Council and an employee will enter into an agreement with the financier whereby Council will ensure repayments under the finance lease are made by deducting the repayment amount from the employee's salary.

The employee will own the vehicle and has the right to take the vehicle with them should they leave employment of the City, with responsibility for the vehicle passed on to the employee.

Remote Area Housing

Eligible employees may salary package the following items under this Policy:

Rent - Employer Provided Housing

Council, at its discretion may agree to provide eligible employees with a Council owned or leased rental property as part of their package, and the employee may apply to salary package 100% of the rental value tax free by being paid part of their Total Remuneration as a non-taxable remote housing reimbursement. Their Base Cash Salary will be reduced accordingly.

Rent - Private Rentals

Employees renting privately (i.e. employees who have a rental agreement with a landlord or agency), within a Remote Area can apply to salary package 50% of their rental value tax free through being paid

part of their Total Remuneration as a non-taxable remote housing reimbursement. Their Base Cash Salary will be reduced accordingly.

Mortgage Interest

Subject to qualifying criteria outlined in the City's operational practice and procedure, employees with a mortgage on their home which is in a Remote Area can apply to salary package their interest expenses on the mortgage. The home must be their usual place of residence.

The employee receives reimbursement of 100% of their interest expenses paid through being paid part of their Total Remuneration as a reimbursement. Their Base Cash Salary will be reduced accordingly. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package interest paid during the period of their employment with the City of Busselton and only from 1 July 2014 onwards.

Remote Area Domestic Energy

Subject to qualifying criteria outlined in the City's operational practice and procedure, employees who package remote area housing benefits can apply to salary package 100% of the value of the cost of their residential electricity and gas expenses tax free through being paid part of their Total Remuneration as a reimbursement. Their Base Cash Salary will be reduced accordingly. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package energy costs paid during the period of their employment with the City of Busselton and for the period that they are / have been claiming a remote housing benefit.

Airline Lounge Membership

Employees can apply to salary package the cost of the following:

- Airline lounge membership joining fee
- Airline membership annual renewal fee

Their Base Cash Salary will be reduced accordingly. These membership fees are "tax free" when provided to an employee as part of a Salary Packaging arrangement.

Membership fees to more than one airline lounge facility are permitted.

Frequent Flyer membership fees are not eligible for salary packaging as they do not give an entitlement to use an airline lounge facility.

Policy Background

Policy Reference No. -	
Owner Unit –	Employee Services & Risk
Originator –	Employee Services & Risk
Policy approved by –	Council
Date Approved -	For consideration
Date Reviewed -	As required
Related Documents	Salary Packaging Operational Practices, Procedures and Manuals Salary Packaging Agreement City of Busselton Enterprise Agreement 2014

History

Council Resolution	Date	Information
		Date of implementation Version 1
		Amended Policy to include Remote Area Mortgage Interest, Remote Area Domestic Energy, Airline Lounge Membership Version 2
		Amended Policy to streamline and simplify Version 3

Number	Salary Packaging	Version 3

1. PURPOSE

The objective of this policy is to provide the guiding document for the provision of various salary packaging options to eligible City of Busselton employees. Salary Packaging is primarily an attraction and retention tool and hence this policy aims to increase staff attraction and retention.

2. SCOPE

This policy applies to all full time, part time and fixed term employees (longer than 12 months duration), subject to meeting specific eligibility criteria relevant to the packaged benefit sought.

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- Remote Area Domestic Energy
- Airline Lounge Membership

ATO

Australian Taxation Office

Base Cash Salary

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Benefit

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Fringe Benefits Tax (FBT)

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Salary Packaging	An arrangement between an employee and employer whereby the employee elects to exchange Base Cash Salary for a Benefit but for the purposes of this Policy does not include superannuation.
Total Remuneration	Total package value assigned to the permanently occupied position that the employee is entitled to receive under an agreement or contract of employment with the City expressed as an annual sum.

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Elected Members will:

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- Adopt and review this policy on a periodic basis as required.

CEO will:

- Endorse and enforce all standards documented in this policy;
- Endorse and enforce operational Salary Packaging practices and procedures which include, but are not limited to:
    - Eligibility and participation criteria
    - Rules for application of Salary Packaging;
    - Processes and/or forms to ensure an effective, compliant scheme;

  - Information capture requirements;
  - Training requirements.
- Regularly review Salary Packaging opportunities to continuously identify opportunities for improved attraction and retention of staff.
- Establish mechanisms to monitor compliance with this policy;
- Establish processes to deal with instances of non-compliance to this policy or related operational practices and procedures.

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Membership fees to more than one airline lounge facility are permitted.

Frequent Flyer membership fees are not eligible for salary packaging as they do not give an entitlement to use an airline lounge facility.

Policy Background

Policy Reference No. -	
Owner Unit –	Employee Services & Risk
Originator –	Employee Services & Risk
Policy approved by –	Council
Date Approved -	For consideration
Date Reviewed -	As required
Related Documents	Salary Packaging Operational Practices, Procedures and Manuals Salary Packaging Agreement

City of Busselton Enterprise Agreement 2014

History

Council Resolution	Date	Information
		Date of implementation Version 1
		Amended Policy to include Remote Area Mortgage Interest, Remote Area Domestic Energy, Airline Lounge Membership Version 2
		Amended Policy to streamline and simplify Version 3

6.5 REVIEW OF POLICY 018 - CUSTOMER SERVICE

SUBJECT INDEX:	Customer Service
STRATEGIC OBJECTIVE:	An organisation that is managed effectively and achieves positive outcomes for the community.
BUSINESS UNIT:	Information Services
ACTIVITY UNIT:	Customer Servcie
REPORTING OFFICER:	Manager, Information Services - Hendrik Boshoff
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Revised Policy 018 - Customer Service showing tracked changes

PRÉCIS

As part of the Council's ongoing policy review process the Customer Service Policy – Policy 018 is presented for review and updating to the current policy format.

BACKGROUND

The Policy and Legislation Committee has endorsed an ongoing policy review process, whereby all policies of the Council will be reviewed, with the aim of determining the ongoing applicability of the policies, along with standardisation and reduction.

Council adopted the policy 12 May 2010 and not been reviewed since. This report documents the review of the policy, finding it only requires minor updates to bring the policy up to current standards.

STATUTORY ENVIRONMENT

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

RELEVANT PLANS AND POLICIES

This report proposes updates of Council policy 018 Customer Service

FINANCIAL IMPLICATIONS

Nil

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The ongoing policy review process is part of the City's governance systems which ensure responsible, ethical and accountable decision-making.

As the policy provides guidance for Council and the City about customer service expectations, the policy aligns with Council's Strategic Priority Key Goal Area 6:

"Open and Collaborative Leadership"

and more specifically with the Community Objective 6.3:

"An organisation that is managed effectively and achieves positive outcomes for the community".

RISK ASSESSMENT

Not required for this review of a Council policy.

CONSULTATION

During the process of the first stage of the policy review, consideration was given to the policy to determine whether there was a need to invite submissions on any proposed changes to policies. This policy review is not considered to require any public consultation.

OFFICER COMMENT

This report presents the review of the Customer Service Policy. The policy has provided consistent guidance to the Council and the City to meet their service provision obligations to the community, its residents and stakeholders.

The Customer Service Policy has been reviewed and officers found the policy is working well for the City's current needs. The only update required is replacing the word Shire to City in numerous places to bring the policy into alignment with the City's current name.

CONCLUSION

No substantial changes are recommended. The operation of the policy has been examined in detail to ensure no other changes are required. It is the considered view of officers that the policy included in this report has been operating efficiently and effectively since it was adopted by the Policy and Legislation Committee and the Council

OPTIONS

The Council could choose not to change the policy or to make additional changes to the policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The policy amendments will be effective immediately upon adoption by the Council

<u>OFFICER RECOMMENDATION</u>

That the revised Council Policy 018 – Customer Service as shown in Attachment A be adopted:

018	**Customer Service**	**V1 Current**

STATEMENT

The Council recognises and acknowledges the importance of providing excellence in customer services to the community, its residents and stakeholders.

PURPOSE / RATIONALE

The intent of this policy is to provide the guiding document for the Council and the City to meet their service provision obligations to the community, its residents and stakeholders.

The development of this policy has taken into account the key factors impacting on customer service provision including, but not limited to, customer expectations, existing policy and legislation, identified risks and endorsed service delivery models.

SCOPE

This Policy applies to all Councillors, Employees, Apprentices, Trainees and Contractors of the City of Busselton.

DEFINITIONS

Customer is defined as any person, external and internal to this organisation, who approaches Councillors, Employees, Apprentices, Trainees and Contractors of the City of Busselton with a request for information or services.

Customer Advocacy is defined as an approach to customer service that focuses on what is best for the customer. Customer Advocates are facilitators between the customers and the organisation.

Customer Service is defined as the direct provision of information or services to customers. This includes assisting our customers to identify others within our community that may be able to meet the needs of our citizens.

City of Busselton Customer Service Charter is a document that details the City of Busselton's commitment to delivering excellence in customer service to the community. This document clearly states the organisation's mission as well as customer service deliverables established by the Council. This document is referred to here after as the Charter.

POLICY CONTENT

The City of Busselton regards the provision of excellent customer services as a core strategic responsibility. In development of this policy, the Council has considered community feedback and expectations, external drivers, relevant constraints and organisational priorities. In addition, this policy takes into account the existing City of Busselton Code of Conduct (037/1 V6), which broadly outlines responsible behaviour for all Councillors and City Officers. This policy applies directly to the delivery of services documented in the City of Busselton Customer Service Charter and remains valid regardless of future reviews and changes to that document. This policy is to ensure that everyone within the organisation understands the duties and responsibilities applicable at each level.

The City of Busselton Customer Service Policy is our commitment to the community to:

- Act with integrity, timeliness, efficiency and economy;
- Be open, available, accountable and transparent in our decision making;
- Treat others honestly, respectfully, fairly and in a timely manner;
- Provide accessible, consistent, accurate and relevant information and;
- Invite and be informed by community requests, suggestions and feedback.

Responsibility

Elected Members shall:

- Ensure guidelines for customer service delivery as stated in this Policy and the Charter are current and relevant;
- Review this Policy and the Charter on a periodic basis as required by changing community needs;
- Identify performance indicators for expected customer service outcomes, including expected levels of compliance and reporting periods;
- Support CEO and Executives in the provision of excellence in customer service;
- Regularly review, with the CEO, performance against agreed standards to continuously identify opportunities for improvement.

CEO and Executives shall:

- Endorse and support all standards documented in this Policy and the Charter;
- Contribute to the regular periodic review of this Policy and the Charter by:
    - Engaging in regular, community consultation to ensure current and future customers' needs and requirements are reflected in organisational processes, systems and structures;
    - Identifying opportunities for improvements to service delivery;
- Support Managers and other staff in the provision of excellence in customer service;
- Establish mechanisms to monitor compliance with this Policy and the Charter across all areas of responsibility;
- Establish processes to deal with failure to meet endorsed standards;
- Report to the Council on performance indicators for customer service delivery.

Management shall:

- Optimize and support service delivery mechanisms to comply with this Policy and the Charter;
- Ensure staff under direct and indirect supervision are aware of and are following guidelines detailed in this Policy and the charter;
- Ensure provision of ongoing training to all areas of the organisation to further develop skills relevant to customer service provision;
- Implement established procedures to deal with failure to meet endorsed standards of service delivery;
- Report to CEO and Executives on performance indicators for customer service.

Employees, Contractors, Apprentices and Trainees shall:

- Comply with this Policy and the Charter
- Actively support others in compliance with this Policy and the Charter
- Undertake training and performance management as required to maintain excellence in customer service.
- Report to Managers as required on performance indicators for customer service.

Customer Focus Staff shall additionally:

- Undertake Customer Advocacy through the direct provision of complaint, dispute and grievance support as required by members of the public and within guidelines provided in this Policy and the Charter and the Code of Conduct;

- Undertake support across the organisation in the form of coaching and training to ensure customer service expectations are being met;
- Seek and report on customer feed back, positive and negative, during the course of customer interaction.

Policy Background

Policy Reference No. - 018
Owner Unit – Customer Service
Originator – Customer Service Coordinator
Policy approved by – Council
Date Approved - 12 May, 2010

History

Council Resolution	Date	Information
C1005/150	12 May, 2010	Date of implementation Version 1

Last updated 12/05/2010 (implementation)

018	Customer Service	V1 Current

STATEMENT

The Council recognises and acknowledges the importance of providing excellence in customer services to the community, its residents and stakeholders.

PURPOSE / RATIONALE

The intent of this policy is to provide the guiding document for the Council and the ~~Shire~~City to meet their service provision obligations to the community, its residents and stakeholders.

The development of this policy has taken into account the key factors impacting on customer service provision including, but not limited to, customer expectations, existing policy and legislation, identified risks and endorsed service delivery models.

SCOPE

This Policy applies to all Councillors, Employees, Apprentices, Trainees and Contractors of the ~~Shire~~City of Busselton.

DEFINITIONS

Customer is defined as any person, external and internal to this organisation, who approaches Councillors, Employees, Apprentices, Trainees and Contractors of the ~~Shire~~City of Busselton with a request for information or services.

Customer Advocacy is defined as an approach to customer service that focuses on what is best for the customer. Customer Advocates are facilitators between the customers and the organisation.

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Elected Members shall:

- Ensure guidelines for customer service delivery as stated in this Policy and the Charter are current and relevant;
- Review this Policy and the Charter on a periodic basis as required by changing community needs;
- Identify performance indicators for expected customer service outcomes, including expected levels of compliance and reporting periods;
- Support CEO and Executives in the provision of excellence in customer service;
- Regularly review, with the CEO, performance against agreed standards to continuously identify opportunities for improvement.

CEO and Executives shall:

- Endorse and support all standards documented in this Policy and the Charter;
- Contribute to the regular periodic review of this Policy and the Charter by:
  - Engaging in regular, community consultation to ensure current and future customers' needs and requirements are reflected in organisational processes, systems and structures;
  - Identifying opportunities for improvements to service delivery;
- Support Managers and other staff in the provision of excellence in customer service;
- Establish mechanisms to monitor compliance with this Policy and the Charter across all areas of responsibility;
- Establish processes to deal with failure to meet endorsed standards;
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Management shall:

- Optimize and support service delivery mechanisms to comply with this Policy and the Charter;
- Ensure staff under direct and indirect supervision are aware of and are following guidelines detailed in this Policy and the charter;
- Ensure provision of ongoing training to all areas of the organisation to further develop skills relevant to customer service provision;
- Implement established procedures to deal with failure to meet endorsed standards of service delivery;
- Report to CEO and Executives on performance indicators for customer service.

Employees, Contractors, Apprentices and Trainees shall:

- Comply with this Policy and the Charter
- Actively support others in compliance with this Policy and the Charter
- Undertake training and performance management as required to maintain excellence in customer service.
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Policy Background

Policy Reference No. - 018
Owner Unit – Customer Service
Originator – Customer Service Coordinator
Policy approved by – Council
Date Approved - 12 May, 2010

History

Council Resolution	Date	Information
C1005/150	12 May, 2010	Date of implementation Version 1

6.6 REVIEW OF LEGAL REPRESENTATION - COSTS INDEMNIFICATION POLICY AND ASSOCIATED INSTRUMENT OF DELEGATION

SUBJECT INDEX:	Governance: Committee Meetings
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Governance Services
ACTIVITY UNIT:	Governance
REPORTING OFFICER:	Councillor Support Officer - Lisa Haste
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Cliff Frewing
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A Current Legal Representation Costs Indemnification Policy
	Attachment B Marked up version of Legal Representation Costs Indemnification Policy
	Attachment C Local Government Guideline Number 14
	Attachment D Current Instrument of Delegation
	Attachment E Marked up version of Instrument of Delegation

PRÉCIS

As part of the Council's ongoing policy review, the policy relating to Legal Representation PO85 – Costs Indemnification has been reviewed. The recommended policy is in accordance with the model policy in the Department's guideline.

In addition, it is proposed to amend the associated Council delegation, Delegation 5A, but there is no change to the intent of the delegation.

BACKGROUND

The Policy and Legislation Committee has endorsed an ongoing policy review process, whereby all policies of the Council will be reviewed, with the aim of determining the ongoing applicability of the policies, along with standardisation and reduction.

There is a legislative requirement to review Delegations on an annual basis.

STATUTORY ENVIRONMENT

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

RELEVANT PLANS AND POLICIES

This report proposes the adoption of a Council policy to replace an existing policy.

FINANCIAL IMPLICATIONS

Nil.

Long-term Financial Plan Implications

Nil.

STRATEGIC COMMUNITY OBJECTIVES

Sound policy development and review processes contribute to a responsible and accountable Local Government in accordance with the City's Strategic Plan.

RISK ASSESSMENT

If the City does not have this Policy in place, then the employees and elected members are not provided with appropriate legal cover, and it may also require Special Council meetings to be called to consider applications.

CONSULTATION

As a policy with an internal focus, this policy is not considered to require any public consultation.

OFFICER COMMENT

As identified in the Department's guideline on this matter, it is acknowledged that there is an increased risk of legal action being taken or threatened against individual Council members or employees. The policy that has been developed as a model by the Department seeks to provide a standard set of parameters for all local governments for protection of their interests in this regard. The new policy that is proposed is not different in its intent from the existing policy, it simply fully covers all matters recommended to be in the policy by the Department.

The existing policy (Attachment A) and proposed policy (Attachment B) are appended to this report. The proposed policy modifies the existing policy so that it reflects the content of the Local Government Operations Guidelines Number 14 – Legal Representation for Council members and Employees (Attachment C).

It is also proposed as part of the consideration of this matter, that the Council updates its delegation to the CEO to deal with applications of an urgent nature. This requires an absolute majority decision of the Council. The current delegation (Attachment D) and the proposed new delegation (Attachment E) are attached to this report.

CONCLUSION

The intent of the new proposed policy is the same as the existing policy, however it simply covers all of the matters that the Department of Local Government have recommended be in the policy

OPTIONS

The Council may determine to maintain the existing policy or to revise aspects of the recommended policy, for example the monetary limit to which the CEO can provide approval.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The revised policy and delegation that is recommended would be effective immediately upon adoption by the Council.

OFFICER RECOMMENDATION

ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED (delete if not)

That the Committee recommends to Council that it:

1. adopts the amended "Legal Representation for Council Members and Employees" Policy to replace the existing "Legal Representation – Costs Indemnification Policy":

085	Legal Representation for Council Members and Employees	V2 Current

1.0 PURPOSE

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions. In most situations the City of Busselton may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district.

2.0 SCOPE

The policy applies to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the policy.

3.0 POLICY CONTENT

3.1 Definitions

approved lawyer is to be –

(a) a 'certified practitioner' under the *Professions Act 2008*

(b) from a law firm on the City's or WALGA's panel of legal service providers, if relevant, unless the Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and

(c) approved in writing by the Council or the CEO under delegated authority.

council member or employee means a current or former Commissioner, Council member or employee of the City of Busselton.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are in respect of:

(a) a matter or matters arising from the performance of the functions of the Council member or employee; and

(b) legal proceedings involving the Council member or employee that have been, or may be, commenced.

legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

legal services includes advice, representation or documentation that is provided by an approved lawyer.

payment by the City of Busselton of legal representation costs may be either by –

(a) a direct payment to the approved lawyer (or the relevant firm); or
(b) a reimbursement to the Council member or employee.

3.2 Payment Criteria

There are four major criteria for determining whether the City of Busselton will pay the legal representation costs of a Council member or employee. These are –

(a) the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
(b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
(c) in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
(d) the legal representation costs do not relate to a matter that is of a personal or private nature.

3.3 Examples of legal representation costs that may be approved

If the criteria in clause 3.2 of this policy are satisfied, the City may approve the payment of legal representation costs –

(a) where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee; or
(b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
(c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

3.4 Application for payment

A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or the CEO. The written application for payment of legal representation costs is to give details of –

(a) the matter for which legal representation is sought;
(b) how that matter relates to the functions of the Council member or employee making the application;
(c) the lawyer (or law firm) who is to be asked to provide the legal representation;
(d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
(e) an estimated cost of the legal representation; and
(f) why it is in the interests of the City for payment to be made.

The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates. As far as possible the application is to be made before commencement of the legal representation to which the application relates.

An application to the Council is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

3.5 Written Statement

The application is to be accompanied by a signed written statement by the applicant that he or she –
(a) has read, and understands, the terms of this Policy;
(b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of Clause 3.11 and any other conditions to which the approval is subject; and
(c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 3.11 of this policy.

3.6 Application for Payment

In relation to clause 3.5 (c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

3.7 Legal representation costs – Limit

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application. A council member or employee may make a further application to the council in respect of the same matter.

3.8 Council Powers – Decision process and conditions

The council may –
(a) refuse;
(b) grant; or
(c) grant subject to conditions
an application for payment of legal representation costs.

Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Councilmembers' or employees' insurance policy or its equivalent.

3.9 Revocation and variation

The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

The Council may, subject to natural justice principles, determine that a Council member or employee whose application has been approved has, in respect of the matter for which legal representation costs were approved –
(a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
(b) given false or misleading information in respect of the application
A determination under this clause may be made by the Council only on the basis of, and consistent

with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination under this clause, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 3.11.

3.10 Delegation to Chief Executive Officer

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, the powers of the council under clause 3.8, to a maximum of $10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this Policy.

3.11 Repayment of legal representation costs

A Council member or employee whose legal representation costs have been paid by the City is to repay the City –

(a) all or part of those costs – in accordance with a determination by the Council under clause 3.9;

(b) as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

Policy Background

Policy Reference No. - 085
Owner Unit – Office of the Chief Executive
Originator – Manager, Governance Services
Policy approved by – Council
Date Approved – 27 June, 2012
Review Frequency – As required
Related Documents – N/A
History

Local Government Operational Guidelines Number 14 – modified April 2006

Council Resolution	Date	Information
C1206/166	27 June, 2012	Department of Local Government has republished its model policy. This version is based on that model policy Version 2
		Version 1

b) adopts the amended delegation 5A – Legal Representation for Council Members and Employees:

INSTRUMENT OF DELEGATION

Ref No	LG Act Ref	Delegate	Delegation Subject
5A	5.42(1)(a)	Chief Executive Officer	**Provision of Urgent Legal Services**

Delegator

Council.

Power/Duty

To provide authorisation to the CEO to approve applications for urgent legal assistance in accordance with Clause 3.10 of Council policy PO85 "Legal Representation for Council members and employees" to a maximum of $10,000.

3.10 Delegation to Chief Executive Officer
In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, the powers of the council under Clause 3.8 to a maximum of $10,000 in respect of each application.
An application approved by the CEO is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this Policy.

Conditions

The determination must be made in accordance with the provisions of the Council policy "Legal Representation for Council members and employees".

Statutory Framework

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

Verification

Council Resolution
C1606/140
Council Resolution
C1506/161
Council Resolution
C1406/161
Council Resolution
C1306/168
Council Resolution
C1206/166
Council Resolution
C1106/199
Council Resolution
C1006/217
Council Resolution
C0906/243
Council Resolution
C0806/188

Review Requirements

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

Related Documents

Legal Representation Policy – PO85

Notes of Alterations

7/2/2017 – Amended to be fully consistent with Department of Local Government Guideline 14
27/06/2012 – New policy adopted.
22/06/2011 - Update to refer to the correct section of the *Local Government Act 1995.*

085	Legal Representation for Council Members and Employees	V2 Current

1.0 PURPOSE

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions. In most situations the City of Busselton may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district.

2.0 SCOPE

The policy applies to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the policy.

3.0 POLICY CONTENT

3.1 Definitions

approved lawyer is to be –
(a) a 'certified practitioner' under the *Legal Practice Act 2003*;
(b) approved in writing by the Council or the CEO under delegated authority.

council member or employee means a current or former Council member or employee of the City of Busselton.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer.

legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

legal services includes advice, representation or documentation that is provided by an approved lawyer.

payment by the City of Busselton of legal representation costs may be either by –
(a) a direct payment to the approved lawyer (or the relevant firm); or
(b) a reimbursement to the Council member or employee.

3.2 Payment Criteria

There are four major criteria for determining whether the City of Busselton will pay the legal representation costs of a Council member or employee. These are –
(a) the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
(b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;

(c) in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
(d) the legal representation costs do not relate to a matter that is of a personal or private nature.

3.3 Examples of legal representation costs that may be approved

If the criteria in clause 3.2 of this policy are satisfied, the City may approve the payment of legal representation costs –
(a) where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee; or
(b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
(c) where exceptional circumstances are involved.

The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

3.4 Application for payment

A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or the CEO. The written application for payment of legal representation costs is to give details of –
(a) the matter for which legal representation is sought;
(b) how that matter relates to the functions of the Council member or employee making the application;
(c) the lawyer (or law firm) who is to be asked to provide the legal representation;
(d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
(e) an estimated cost of the legal representation; and
(f) why it is in the interests of the City for payment to be made.

The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter. As far as possible the application is to be made before commencement of the legal representation to which the application relates.
The application is to be accompanied by a signed written statement by the applicant that he or she –
(a) has read, and understands, the terms of this Policy;
(b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions and any other conditions to which the approval is subject; and
(c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 3.9 of this policy.

An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

3.5 Legal representation costs – Limit

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid. A council member or employee may make a further application to the council in respect of the same matter.

3.6 Decision process and conditions

The council may –
(a) refuse;
(b) grant; or
(c) grant subject to conditions
an application for payment of legal representation costs.

Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Council members' or employees' insurance policy or its equivalent.

3.7 Revocation and variation

The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

The Council may, subject to natural justice principles, determine that a Council member or employee whose application has been approved has, in respect of the matter for which the approval was made –
(a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
(b) given false or misleading information in respect of the application
and require the repayment by the Council member or employee the legal representation costs paid by the City.

3.8 Delegation to Chief Executive Officer

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, the powers of the council under clause 3.6 to determine the application and set conditions, to a maximum of $10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this Policy.

3.9 Repayment of legal representation costs

A Council member or employee whose legal representation costs have been paid by the City is to repay the City –
(a) all or part of those costs – in accordance with a determination by the Council under clause 3.7;

(b) as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

Policy Background

Policy Reference No. - 085
Owner Unit – Office of the Chief Executive
Originator – Manager, Governance Services
Policy approved by – Council
Date Approved – 27 June, 2012
Review Frequency – As required
Related Documents – N/A

History

Council Resolution	Date	Information
C1206/166	27 June, 2012	Department of Local Government has republished its model policy. This version is based on that model policy Version 2
		Version 1

085	Legal Representation for Council Members and Employees	V2 Current

1.0 PURPOSE

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions. In most situations the City of Busselton may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district.

2.0 SCOPE

The policy applies to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the policy.

3.0 POLICY CONTENT

3.1 Definitions

approved lawyer is to be –

(a) a 'certified practitioner' under the *Professions Act 2008*

(b) from a law firm on the City's or WALGA's panel of legal service providers, if relevant, unless the Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and

(c) approved in writing by the Council or the CEO under delegated authority.

council member or employee means a current or former Commissioner, Council member or employee of the City of Busselton.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are in respect of:

(a) a matter or matters arising from the performance of the functions of the Council member or employee; and

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(a) the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
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(c) in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
(d) the legal representation costs do not relate to a matter that is of a personal or private nature.

3.3 Examples of legal representation costs that may be approved

If the criteria in clause 3.2 of this policy are satisfied, the City may approve the payment of legal representation costs –

(a) where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee; or
(b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
(c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

3.4 Application for payment

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(a) the matter for which legal representation is sought;
(b) how that matter relates to the functions of the Council member or employee making the application;
(c) the lawyer (or law firm) who is to be asked to provide the legal representation;
(d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
(e) an estimated cost of the legal representation; and
(f) why it is in the interests of the City for payment to be made.

The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct

in relation to the matter to which the application relates. As far as possible the application is to be made before commencement of the legal representation to which the application relates.

An application to the Council is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

3.5 Written Statement

The application is to be accompanied by a signed written statement by the applicant that he or she –

(a) has read, and understands, the terms of this Policy;
(b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of Clause 3.11 and any other conditions to which the approval is subject; and
(c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 3.11 of this policy.

3.6 Application for Payment

In relation to clause 3.5 (c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

3.7 Legal representation costs – Limit

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application. A council member or employee may make a further application to the council in respect of the same matter.

3.8 Council Powers – Decision process and conditions

The council may –

(a) refuse;
(b) grant; or
(c) grant subject to conditions

an application for payment of legal representation costs.

Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Councilmembers' or employees' insurance policy or its equivalent.

3.9 Revocation and variation

The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

The Council may, subject to natural justice principles, determine that a Council member or employee whose application has been approved has, in respect of the matter for which legal representation costs were approved –

(a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or

(b) given false or misleading information in respect of the application

.A determination under this clause may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination under this clause, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 3.11.

3.10 Delegation to Chief Executive Officer

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, the powers of the council under clause 3.8, to a maximum of $10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this Policy.

3.11 Repayment of legal representation costs

A Council member or employee whose legal representation costs have been paid by the City is to repay the City –

(a) all or part of those costs – in accordance with a determination by the Council under clause 3.9;

(b) as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

Policy Background

Policy Reference No. - 085
Owner Unit – Office of the Chief Executive
Originator – Manager, Governance Services
Policy approved by – Council
Date Approved – 27 June, 2012
Review Frequency – As required
Related Documents – N/A

History

Local Government Operational Guidelines Number 14 – modified April 2006

Council Resolution	Date	Information
C1206/166	27 June, 2012	Department of Local Government has republished its model policy. This version is based on that model policy Version 2
		Version 1

Government of **Western Australia**
Department of **Local Government and Communities**

Local Government Operational Guidelines

Number 14 – April 2006

Legal Representation for Council Members and Employees

1. Introduction

In today's society there is an increased risk of legal action being taken or threatened against individual council members and employees. Council members and employees may require legal advice and representation and expect their local government to provide financial assistance to meet the cost of the advice or representation.

For example, council members or employees may be threatened with legal action when an aggrieved party believes that they will not, or have not, carried out their legislative functions or responsibilities in the correct and appropriate manner. Legal action may also be threatened where it is anticipated that such action will influence a vote or a recommendation.

Council members and employees may feel inhibited in undertaking their roles in a full, frank and impartial manner if they do not have an assurance that they are protected from threats and will be given proper legal representation if any legal action is taken against them. Local governments have a legislative duty of care to their employees to provide a safe working environment and morally have the same duty to council members. Accordingly, it is appropriate and prudent for local governments to assist council members and employees by adopting a policy to fund or partly fund the cost of providing legal representation in appropriate circumstances.

The Inquiry into the City of Joondalup criticised some council members for making uninformed and ill-advised decisions to pay personal legal expenses of the Chief Executive Officer (CEO). It is therefore important that council adopts a policy on the provision of financial assistance so that its position is known to the council members, employees and the community in advance of applications for funding being made. Non-elected council committee members may also require assistance and should be considered in any policy adopted by council.

This guideline, and the incorporated model policy, are provided to assist councils when making decisions or developing a policy. It is important that a council devotes time to understanding the issues outlined in this guideline.

If a policy is adopted and legal representation costs are granted under the policy, it is critical that council has presented to it full and detailed accounts from the lawyer approved to provide the legal representation to ensure that the representation provided complies with the approval given. Repayment of any costs associated with matters not approved should be enforced.

This guideline does not address the situation where council members and employees are interviewed during, or are required to give evidence to, an inquiry into their local government. Determining whether financial assistance is given in these situations is a complex matter and one that will relate to the circumstances and reasons for the inquiry.

2. Legislation

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a council member or employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law. However, the legislation does not preclude people

taking action against individual council members or employees if they believe that the council member or employee has not acted in good faith.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7(2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions, a council can expend funds to provide legal representation for council members and employees, as long as it believes that the expenditure falls within the scope of the local government's function.

3. Determining a Suitable Policy

The policy should have a clear set of principles or directives to help the council deal with a situation where a council member or employee is defending or will need to defend a legal action or requires advice or representation and is requesting financial assistance. The policy should set out the circumstances under which funding will be provided, the level of funding that will be provided and the processes to be followed by the applicant when making a request.

The degree of complexity of an appropriate policy may vary but generally could include the following matters –

- under what circumstances would financial assistance be provided. For example, where legal action is taken against a council member or employee in connection with the performance of their duties and they have not acted illegally, dishonestly or in bad faith;
- who would make the decision that financial support would be provided (eg council or the CEO);
- who would provide the legal services (eg the local government's lawyers, other lawyers);
- what limits, if any, would be placed on financial assistance;
- how applications would be made for assistance;
- what obligations a council member or employee receiving assistance should have (eg an obligation to disclose anything that might affect representation or to act reasonably);
- whether contingent authorisation in urgent cases would be provided for and who would exercise that authority;
- under what circumstances could financial assistance be withdrawn (eg person having acted illegally, dishonestly or otherwise in bad faith);
- provision for the recoup of money already provided under the policy where approval is withdrawn; and
- a clear statement that legal representation will not be provided for matters that relate to the personal affairs of a council member or employee (eg under investigation for a matter not related to a legislative function or an employee seeking legal advice on a contract of employment).

3.1 Other Circumstances where Funding Requests may be Made

Under legislation, any expenditure of a local government's funds must be justified on the basis that the expenditure will 'provide for the good government of persons in its district'. Therefore, in formulating a policy on legal representation the council must take into account the need to satisfy itself that the expenditure can be justified as providing for that good government.

Local government council members and employees will at times be subject to personal public criticism they consider to be unfair. Depending on the circumstances and the veracity of the criticism, council members or employees may seek to redress the situation by taking legal action. Legal advice received by the Department suggests that only in exceptional circumstances would a local government be able to justify, under the 'good government' provisions, funding the initiation of legal action by a council member or employee.

It is important to note that where public criticism is made about the local government, ie the City, Town, or Shire, funding could not be justified. Legal precedent dictates that it is fundamental to public scrutiny that governments be open to criticism by members of the community. The threat of civil action against any person who publicly criticises a local government will have an inhibiting effect on freedom of speech and inevitably lessen a local government's accountability to its community.

Council members, if asked to vote on such a request, should ask themselves 'would a reasonable person, given all the facts, conclude that the expenditure provides for the good government of the persons in the district'. If a majority of council members are satisfied, council could, under its general function power, resolve that the local government fund the obtaining of advice or initiation of legal action by the council member or employee.

Council members should ensure that they receive appropriate documentation that presents reasons for and against the recommendation when considering an application for such funding as they may be asked to justify the decision at a future date. Documentation provides a proper decision-making trail that can be used to support the decision.

As a condition of approval, the council may require the council member or employee to undertake to refund the costs of legal representation paid by the local government should their action be successful.

3.2 Support for Former Council Members and Employees

The council, when considering the scope of its policy, will need to determine if the policy extends to the funding of legal representation for former council members, commissioners and employees and under what circumstances funding would be provided.

3.3 Delegation

A number of councils have, in adopting a policy on this issue, delegated to their CEO the power to deal with requests for the payment of legal representation costs. Because of the sensitive nature of providing funding, some CEOs have asked council not to delegate the power. A council should discuss the matter with the CEO before making any decision to delegate any aspect of its legal representation policy.

It may be appropriate for council to seek agreement from the CEO for a delegation limited to circumstances where a delay in approving a request will be detrimental to the legal rights of the council member or employee.

4. Adopting a Policy

In considering the policy all relevant people are encouraged to study and thoroughly understand the implications and likely consequences of adopting the policy.

A model policy has been provided on the following pages as an example for local governments undertaking their own policy-making on legal representation of adopting the policy. The Department welcomes any comments that individuals or local governments believe will assist in the improvement of the model policy.

Model Policy

Legal Representation for Council Members and Employees

Explanation of key terms

approved lawyer is to be –

(a) a 'certified practitioner' under the *Professions Act 2008*;

(b) from a law firm on the City/Town/Shire's panel of legal service providers, if relevant, unless the council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and

(c) approved in writing by the council or the CEO under delegated authority.

council member or employee means a current or former commissioner, council member, non-elected member of a council committee or employee of the City/Town/Shire.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a council member or employee, by an approved lawyer that are in respect of –

(a) a matter or matters arising from the performance of the functions of the council member or employee; and

(b) legal proceedings involving the council member or employee that have been, or may be, commenced.

legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

legal services includes advice, representation or documentation that is provided by an approved lawyer.

payment by the City/Town/Shire of legal representation costs may be either by –

(a) a direct payment to the approved lawyer (or the relevant firm); or

(b) a reimbursement to the council member or employee.

1. Payment Criteria

1.1 There are four major criteria for determining whether the City/Town/Shire will pay the legal representation costs of a council member or employee. These are –

(a) the legal representation costs must relate to a matter that arises from the performance, by the council member or employee, of his or her functions;

(b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;

(c) in performing his or her functions, to which the legal representation relates, the council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and

(d) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of Legal Representation Costs that may be Approved

2.1 If the criteria in clause 1 of this policy are satisfied, the City/Town/Shire may approve the payment of legal representation costs –

(a) where proceedings are brought against a council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the council member or employee; or

(b) to enable proceedings to be commenced and/or maintained by a council member or employee to permit him or her to carry out his or her functions – for example, where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the council member or employee; or

(c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

2.2 The City/Town/Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a council member or employee.

3. Application for Payment

3.1 A council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the council or the CEO.

3.2 The written application for payment of legal representation costs is to give details of –

(i) the matter for which legal representation is sought;

(ii) how that matter relates to the functions of the council member or employee making the application;

(iii) the lawyer (or law firm) who is to be asked to provide the legal representation;

(iv) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);

(v) an estimated cost of the legal representation; and

(vi) why it is in the interests of the City/Town/Shire for payment to be made.

3.3 The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.

3.4 As far as possible, the application is to be made before commencement of the legal representation to which the application relates.

3.5 The application is to be accompanied by a signed written statement by the applicant that he or she –

(a) has read, and understands, the terms of this policy;

(b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and

(c) undertakes to repay to the City/Town/Shire any legal representation costs in accordance with the provisions of clause 7.

3.6 In relation to clause 3.5(c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

3.7 An application is also to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by an appropriate employee.

4. Legal Representation Costs – Limit

4.1 The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.

4.2 A council member or employee may make a further application to the council in respect of the same matter.

5. Council's Powers

5.1 The council may –

(a) refuse;

(b) grant; or

(c) grant subject to conditions,

an application for payment of legal representation costs.

5.2 Conditions under clause 5.1 may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

5.3 In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the City's/Town's/Shire's council members 'or employees' insurance policy or its equivalent.

5.4 The council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

5.5 The council may, subject to clause 5.6, determine that a council member or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –

(a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or

(b) given false or misleading information in respect of the application.

5.6 A determination under clause 5.5 may be made by the council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

5.7 Where the council makes a determination under clause 5.5, the legal representation costs paid by the City/Town/Shire are to be repaid by the council member or employee in accordance with clause 7.

6. Delegation to Chief Executive Officer

6.1 In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, any of the powers of the council under clause 5.1 and 5.2, to a maximum of $10,000 in respect of each application.

6.2 An application approved by the CEO under clause 6.1, is to be submitted to the next ordinary meeting of the council. Council may exercise any of its powers under this policy, including its powers under clause 5.4.

7. Repayment of Legal Representation Costs

7.1 A council member or employee whose legal representation costs have been paid by the City/Town/Shire is to repay the City/Town/Shire –

(a) all or part of those costs – in accordance with a determination by the council under clause 5.7;

(b) as much of those costs as are available to be paid by way of set-off – where the council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City/Town/Shire paid the legal representation costs.

7.2 The City/Town/Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

These guidelines are also available on the Department's website at www.dlgc.wa.gov.au

Government of **Western Australia**
Department of **Local Government and Communities**

Local Government Advisory Hotline
1300 762 511
Email: lghotline@dlgc.wa.gov.au
8.30am–5.00pm, Monday to Friday

About the Guideline series

This document and others in the series are intended as a guide to good practice and should not be taken as a compliance requirement. The content is based on Department officer knowledge, understanding, observation of, and appropriate consultation on contemporary good practice in local government. Guidelines may also involve the Department's views on the intent and interpretation of relevant legislation.

All guidelines are subject to review, amendment and re-publishing as required. Therefore, comments on any aspect of the guideline are welcome. Advice of methods of improvement in the area of the guideline topic that can be reported to other local governments will be especially beneficial.

For more information about this and other guidelines, contact the Local Government Regulation and Support Branch at:

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Translating and Interpreting Service (TIS) – Tel: 13 14 50

INSTRUMENT OF DELEGATION

Ref No	LG Act Ref	Delegate	Delegation Subject
5A	5.42(1)(a)	Chief Executive Officer	**Provision of Urgent Legal Services**

Delegator

Council.

Power/Duty

To provide authorisation in accordance with Council policy "Legal Representation for Council members and employees" for urgent legal services to a maximum of $10,000.

Conditions

The determination must be made in accordance with the provisions of the Council policy "Legal Representation for Council members and employees".

Legal Representation for Council Members and Employees

1.0 PURPOSE

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions. In most situations the City of Busselton may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district.

2.0 SCOPE

The policy applies to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the policy.

3.0 POLICY CONTENT

3.1 Definitions

approved lawyer is to be –
(a) a 'certified practitioner' under the *Legal Practice Act 2003*;
(b) approved in writing by the Council or the CEO under delegated authority.

council member or employee means a current or former Council member or employee of the City of Busselton.

legal proceedings may be civil, criminal or investigative.

legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer.

legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

legal services includes advice, representation or documentation that is provided by an approved lawyer.

payment by the City of Busselton of legal representation costs may be either by –
(a) a direct payment to the approved lawyer (or the relevant firm); or
(b) a reimbursement to the Council member or employee.

3.2 Payment Criteria

There are four major criteria for determining whether the City of Busselton will pay the legal representation costs of a Council member or employee. These are –
(a) the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
(b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
(c) in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
(d) the legal representation costs do not relate to a matter that is of a personal or private nature.

3.3 Examples of legal representation costs that may be approved

If the criteria in clause 3.2 of this policy are satisfied, the City may approve the payment of legal representation costs –
(a) where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee; or
(b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
(c) where exceptional circumstances are involved.

The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

3.4 Application for payment

A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or the CEO. The written application for payment of legal representation costs is to give details of –
(a) the matter for which legal representation is sought;
(b) how that matter relates to the functions of the Council member or employee making the application;
(c) the lawyer (or law firm) who is to be asked to provide the legal representation;
(d) the nature of legal representation to be sought (such as advice, representation in court,

preparation of a document etc);
(e) an estimated cost of the legal representation; and
(f) why it is in the interests of the City for payment to be made.

The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter. As far as possible the application is to be made before commencement of the legal representation to which the application relates.
The application is to be accompanied by a signed written statement by the applicant that he or she –
(a) has read, and understands, the terms of this Policy;
(b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions and any other conditions to which the approval is subject; and
(c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 3.9 of this policy.

An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

3.5 Legal representation costs – Limit

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid. A council member or employee may make a further application to the council in respect of the same matter.

3.6 Decision process and conditions

The council may –
(a) refuse;
(b) grant; or
(c) grant subject to conditions
an application for payment of legal representation costs.

Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Council members' or employees' insurance policy or its equivalent.

3.7 Revocation and variation

The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

The Council may, subject to natural justice principles, determine that a Council member or employee whose application has been approved has, in respect of the matter for which the approval was made –
(a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
(b) given false or misleading information in respect of the application
and require the repayment by the Council member or employee the legal representation costs paid by the City.

3.8 Delegation to Chief Executive Officer

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, the powers of the council under clause 3.6 to determine the application and set conditions, to a maximum of $10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this Policy.

3.9 Repayment of legal representation costs

A Council member or employee whose legal representation costs have been paid by the City is to repay the City –

(a) all or part of those costs – in accordance with a determination by the Council under clause 3.7;

(b) as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

Statutory Framework

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

Verification

Council Resolution
C1606/140

Council Resolution
C1506/161

Council Resolution
C1406/161

Council Resolution
C1306/168

Council Resolution
C1206/166

Council Resolution
C1106/199

Council Resolution
C1006/217

Council Resolution
C0906/243

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.

Review Dates

08 June, 2016

10 June, 2015

25 June, 2014

26 June, 2013

27 June, 2012

22 June, 2011

23 June, 2010

24 June, 2009

25 June, 2008 (implementation).

Related Documents

Legal Representation Policy.

Notes of Alterations

27/06/2012 – New policy adopted.

22/06/2011 - Update to refer to the correct section of the *Local Government Act 1995.*

INSTRUMENT OF DELEGATION

Ref No	LG Act Ref	Delegate	Delegation Subject
5A	5.42(1)(a)	Chief Executive Officer	**Provision of Urgent Legal Services**

Delegator

Council.

Power/Duty

To provide authorisation to the CEO to approve applications for urgent legal assistance in accordance with Clause 3.10 of Council policy PO85 "Legal Representation for Council members and employees" to a maximum of $10,000.

3.10 Delegation to Chief Executive Officer
In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, the powers of the council under Clause 3.8 to a maximum of $10,000 in respect of each application.
An application approved by the CEO is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this Policy.

Conditions

The determination must be made in accordance with the provisions of the Council policy "Legal Representation for Council members and employees".

Statutory Framework

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

Verification

Council Resolution
C1606/140

Council Resolution
C1506/161

Council Resolution
C1406/161

Council Resolution
C1306/168

Council Resolution
C1206/166

Council Resolution
C1106/199

Council Resolution
C1006/217

Council Resolution
C0906/243

Council Resolution
C0806/188

Review Requirements

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

Related Documents

Legal Representation Policy – PO85

Notes of Alterations

7/2/2017 – Amended to be fully consistent with Department of Local Government Guideline 14

27/06/2012 – New policy adopted.

22/06/2011 - Update to refer to the correct section of the *Local Government Act 1995.*

7. LATE REPORTS

7.1 2016 Annual Compliance

8. GENERAL DISCUSSION ITEMS

9. NEXT MEETING DATE

16 March 2017

10. CLOSURE