



City of Busselton
Geographe Bay

Policy and Legislation Committee Agenda

20 October 2016

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 20 OCTOBER 2016

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, 20 October 2016, commencing at 2.00pm.

The attendance of Committee Members is respectfully requested.



MIKE ARCHER

CHIEF EXECUTIVE OFFICER

14 October 2016

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 20 OCTOBER 2016

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

2. **ATTENDANCE**

Apologies

Approved Leave of Absence

Nil

3. **PUBLIC QUESTION TIME**

4. **DISCLOSURE OF INTERESTS**

5. **CONFIRMATION OF MINUTES**

5.1 **Minutes of the Policy and Legislation Committee Meeting held 29 September 2016**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 29 September 2016 be confirmed as a true and correct record.

6. REPORTS

6.1 NON-EXCLUSIVE COMMERCIAL USE OF CITY LAND

SUBJECT INDEX:	Trading in Public Places
STRATEGIC OBJECTIVE:	A City where the community has access to quality cultural, recreation, leisure facilities and services.
BUSINESS UNIT:	Health Services
ACTIVITY UNIT:	Environmental Health
REPORTING OFFICER:	Manager Health Services - Tanya Gillett
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Draft Policy ↓

PRÉCIS

The Council is asked to consider adopting a policy, presented in draft form, which sets out an overall framework for the management of the 'Non-Exclusive Commercial Use of City Land'. Note that the policy does not deal with: leasehold, commercial use of City land; with the use of City land for events or markets; or with the short-term hiring of City property for functions or similar; the approaches to management of which are guided by other policies or frameworks. The policy does, however, relate to the following kinds of activities on City land–

- Mobile food/drink traders;
- Itinerant food/drink traders;
- *Al fresco* dining (other than where this is facilitated via a lease);
- Recreational activities of some kinds (i.e. 'exercise permits'), but not general sporting use of ovals or similar;
- Tours or similar;
- Traders engaged in the short-term hiring of recreational equipment; and
- Some trading that operates from more or less temporary premises and/or from fixed premises, but on the basis of relatively short-term arrangements, such as trading from a converted/adapted sea container, or from some other relocatable and/or low cost structure.

The development of the draft policy reflects the increasing potential for commercial use of public land, and the need to develop a coherent, fair and workable approach to managing that activity. Particular attention has been paid to developing a policy: that applies consistent principles to different kinds of activities and situations; is administratively simple and comprehensible; and which achieves the best outcomes for the community as a whole. In some instances, the policy represents a significant departure from current practice, and in other cases it does not.

Development of the draft policy also follows earlier Council adoption of a draft policy relating to 'Trading in Public Places', which has subsequently been subject of public consultation. It is envisaged that the draft policy now proposed, if adopted by the Council, will be quickly followed by more detailed policies outlining, in more detail, the approach to be applied to various subsets of the activities that would be covered by the overall 'umbrella' policy relating to most kinds of 'Non-exclusive commercial use of City land'.

BACKGROUND

As is the case in many other local government areas, there is a range of commercial activity that occurs on local government owned and/or managed land in the City of Busselton. That includes commercial activity undertaken on land leased from the City (which has been subject of recent policy development/review). An example of this kind of situation is the *Equinox*, a business that Councillors would be very familiar with. Where commercial activity of this kind occurs –

- The cost of the lease reflects the market value of the land (i.e. the market value either as negotiated giving consideration to advice from a licensed valuer, and/or as determined by an open, competitive process of some kind, in accordance with the requirements of the local government legislation); and
- Other costs associated with developing and operating a ‘permanent, fixed business’ on private land also generally apply (e.g. payment of local government rates, payment of other infrastructure rates and charges, meeting the costs of employing staff to operate a business on a year round basis, and meeting the costs associated with developing and maintaining the building/s that house/s the business/es).

The frameworks associated with facilitating and regulating commercial activity of this kind are well established and reasonably well understood, and there is generally understood to be a ‘level playing field’ for this kind of activity, relative to similar activity on private land. With this kind of activity there is also a financial return to the City (and therefore the community as a whole) reflective of the value of the land (and, by extension, the value of the infrastructure developed and maintained by the City that enhances the value of the land – e.g. the very significant infrastructure investments made by the City, largely utilising ratepayer and taxpayer funds, on behalf of the community, at the Busselton Foreshore).

There are, however, other kinds of commercial activity that also take place on City land, or which may in future take place on City land, and the frameworks associated with some of those other kinds of commercial activity are sometimes not as well established or as well understood. Those kinds of activities include various kinds of mobile, short-term or ephemeral ways of conducting business, such as markets or mobile food vans. There are also particular concerns in some quarters about whether activity of this kind may –

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

Those concerns may or may not be justified (and those kinds of concerns are outlined and discussed in more detail later in this report), but it is also often true that those other kinds of commercial activity may in some instances –

- Provide a relatively low-cost and low-risk basis for new business development;
- Provide a service in a location where services would not otherwise be provided;
- Assist in activating and increasing the vibrancy of public spaces, and in some cases improve the broader commercial/trading environment in the area;
- Deliver additional financial return to the City (and therefore the community as a whole) related to the value of City land, and the value of infrastructure developed and maintained by the City;

- May provide a service (service in the broad sense, 'experience' might be a better word than 'service' in this context) that is genuinely different to that which can be provided by seemingly equivalent permanent, fixed businesses; and
- May complement and support a more conventional, fixed, permanent business, providing additional income for the business, making more effective use of fixed assets (such as commercial kitchens), and building both the business and the brand (i.e. where the business consists of both a fixed, permanent premises and mobile or ephemeral elements).

Examples of these other kinds of commercial activity on City land include –

- Events, and the trading activity associated with events;
- Markets;
- Buskers/street entertainers;
- Mobile traders (i.e. traders, usually food/drink traders, that operate from particular locations for certain periods of time, e.g. the various food vendors that operate from time to time from a location like the King Street Car Park);
- Itinerant traders (i.e. traders, again usually food/drink traders, that offer goods and services by travelling around the District, stopping only for as long as it takes to serve customers in a particular location, e.g. a 'Mr Whippy Van');
- *Al fresco* dining on footpaths or other City land adjacent or close to a permanent, fixed business;
- Recreational activities of various kinds (including sporting events, fitness classes or similar, and things like mobile climbing walls or water playgrounds);
- The running of tours or similar, which wholly or partly take place on City land and/or using City infrastructure (e.g. the jet boat tours which alight from the Busselton Jetty, and at times stop off in Meelup Regional Park);
- Businesses involved in the short-term hiring of recreational equipment, such as bikes, kayaks or jet skis;
- Activities associated with the short-term hiring of City property (e.g. hiring a City building for a function – which may or may not be a 'commercial' activity, but even where it is not a commercial activity, there may be alternative, privately owned locations for the function); or
- Trading that operates from more or less temporary premises and/or from fixed premises, but on the basis of relatively short-term arrangements, such as trading from a converted/adapted sea container, or from some other relocatable and/or relatively low cost structure (although note that once there is a significant degree of 'permanence' associated with a business and/or structure in this kind of example, it becomes indistinguishable from a more conventional leasehold situation, described in the opening paragraphs of this section of the report).

As is also the case in many other local government areas and, in fact, in many other places in the world, the scale and scope of ephemeral commercial activity, and the activity occurring in public spaces and places of all kinds, has grown substantially in recent years. Because of the high variability and seasonality of demand (which may have reduced over recent years, but is still high relative to many other places), the tourist/visitor economy generally, the number and scale of events in the District and the attractiveness of the District from a lifestyle point of view, the City is at or near the forefront of this trend, in comparison with other locations in Western Australia. There is also considerable pressure and opportunity to allow the trend to continue.

The level of activity and the desire in some quarters to further increase the level of activity is, if nothing else, making the current governance arrangements unworkable. At present, there are approvals in place for the following (in addition to an extensive range of activity which falls outside the scope of the proposed policy) -

- 37 mobile food vendors (consisting of 15 ice cream, 10 coffee, eggs, Indian, Mexican, Mediterranean, health food, seafood, fresh fruit and vegetables, 2 burgers and fish & chips);
- 11 itinerant food vendors (9 ice cream and 2 coffee);
- 3 recreational vendors (2 stand-up paddle boards and Jet Adventures);
- 10 'commercial hire sites' (including kayaks, 'Climbtastic', 'Aquatastic', surfing school, and surf cats); and
- 16 outdoor exercise operators.

These traders are currently operating at 30 locations across the District. The City continues to receive approximately eight requests per week for new sites/businesses. This includes a mixture of all of the types of traders listed above.

There is some suggestion that the increased pressure to accommodate these kinds of activities locally is due to the 'mining downturn', with those no longer able to find secure or attractive employment in the mining or related sectors seeking other opportunities. Whilst that may well be true to some degree, it needs to be recognised that this trend is not confined to Western Australia or even to Australia, and is in fact a trend that is present in much of the world, including in many places that are not experiencing the effects of a mining downturn. Instead, these pressures appear to be part of broader socio-economic shifts, characterised by –

- A search for lower-cost and/or more flexible business models, with lower fixed costs and lower barriers to entry (mobile food vans, for instance, are in some respects an example of this);
- Related to the above, increasing regulatory and compliance burdens being applied to most 'conventional' business activity have also increased barriers to entry and business costs generally, and, as one would expect, there has been increased interest in business models where those regulatory and compliance burdens may be lower – this is a form of what could be called 'regulatory arbitrage' (Note that these burdens have almost entirely been in the form of State or Commonwealth imposed requirements for environmental protection, consumer standards, workplace regulation and social protections – e.g. universal access requirements – which have undoubted benefits, but also have costs.);
- Using or re-using existing assets in new and/or more intensive ways (*Uber* is an example of this, with a substantial part of the attractiveness of the business model, at least initially, being the use of what would otherwise be private cars, only actually in productive use for a very small proportion of the time. Providing space for ephemeral food retailers in high amenity areas like the Busselton Foreshore, which would otherwise be less intensively used, is also an example of this.);
- The development of internet based 'platforms', which can aggregate demand and in some cases allow a series of small businesses to compete more effectively with larger business (*Uber* is also an example of this, as is *AirBnB*, although they are themselves now quite large businesses – the latter has disrupted the tourism accommodation business in many parts of the world, although not to a significant extent in Busselton, which has a long tradition of holiday homes and other flexible, small-scale and sometimes relatively

low-cost approaches to providing holiday accommodation. An application called *Healthy Spot* is also an attempt to develop a platform to aggregate demand and to allow small health and fitness businesses to compete more effectively, and there are numerous other examples.);

- Effective use of the internet by small, new or unconventional businesses for marketing purposes more generally, for instance by allowing a business to build awareness online instead of through conventional advertising, or even online advertising, or paying for a high profile business location (this could be as simple as a mobile food van posting information about their location at a particular time on *Facebook*);
- In the face of the increasing corporatisation and globalisation of business, the search for a greater sense of connection with local people and local businesses, and the search for what are perceived to be more ‘authentic’ products or experiences; and
- The increasingly blurred boundaries between shopping and recreation, and between the social and the economic, in many contexts.

There are no doubt other shifts underway, other ways of describing these shifts, and significant scope for discussion and debate about the desirability and/or direction of some or all of these shifts. It is, though, clear that we are going through a period of significant change and uncertainty, and that the City is at or near the forefront of at least some of these changes in the Western Australian context. That represents a significant opportunity for the City and its residents, but also creates a range of challenges. Aspects of all these shifts also have an effect on the use of, or the desire to use, public land for commercial purposes. Not allowing use of public land in these new and/or more flexible ways may simply result in the activity taking place on private land instead (an example of where this kind of activity is already occurring on private land is ‘The Shed’ market in Abbey, near Monaghan’s Corner). That may address some of the concerns related to the new activities, but not necessarily all, and may well result in an overall outcome that is not as desirable as what might be achieved otherwise.

It is in this broader context that the City has sought to develop an overall framework to guide the ‘commercial’ use of City land, and a draft policy relating to the ‘Non-exclusive commercial use of City land’ has been developed for the Council’s consideration (see **Attachment A**). The draft policy is not intended to be a complete policy framework to guide decision-making at the detailed level, but is intended to provide the overarching policy direction. The policy would then be supplemented by more detailed Council policies and/or practices, procedures and guidelines; those would be developed once the overarching policy direction has been determined by the Council.

Note in particular that the draft policy does not relate to the use or development of City land through a leasehold mechanism because, as has already been described, the framework for regulating that kind of activity is already well established and reasonably well understood. The draft policy also does not relate to the regulation and management of events and/or markets, or to the short-term hiring of City property for functions or similar, as those kinds of activities are subject of separate policies and a range of other considerations often not directly relevant to the matters that are subject of the draft policy. The frameworks and issues related to leasehold use of City land, events and markets, the short-term hiring of City property for functions or similar, as well as the frameworks governing similar activities on private land have, however, all been considered in developing the draft policy.

The development of the draft policy has also been prompted by issues that have been raised and related discussion regarding the review and development of a number of more specific policies, including those relating to ‘commercial hire sites’, ‘trading in public places’ and ‘outdoor eating facilities’. The Council, at its meeting of 14 October 2015, had, in fact, adopted a draft ‘Trading in Public Places Policy’ for consultation purposes (a copy of which can be provided to Councillors if required). The outcomes of the consultation process are outlined in the ‘Consultation’ section of this

report. There have also been a number of informal briefing sessions with Councillors on these and related issues.

Further consideration and discussion by officers, though, has identified a significant concern that the City may not be progressing towards development of an integrated or coherent policy approach that would be in the best, long-term interests of the City, its residents and ratepayers. It was considered that some more fundamental re-thinking and reassessment was required before officers would be in a position to recommend that the Council adopt the then draft policy in final form (also noting there were a number of potential modifications that had already been discussed with Councillors following the consultation period). That re-thinking and re-assessment is described in the 'Officer Comment' section of this report.

STATUTORY ENVIRONMENT

- *Land Administration Act 1997* and associated regulations
- *Local Government Act 1995* and associated regulations
- *Planning and Development Act 2005* and associated regulations
- *Building Act 2012* and associated regulations
- *Health Act 1911* and associated regulations
- *Public Health Act 2016*
- *Food Act 2008* and associated regulations
- *Local Planning Scheme 21* and associated structure plans and policies
- *Activities in Thoroughfares and Public Places and Trading Local Law*
- *Property Local Law*
- *Jetties Local Law*
- *Airport Local Law*

RELEVANT PLANS AND POLICIES

- *Busselton Foreshore Master Plan*
- *Busselton City Centre Conceptual Plan*
- *Dunsborough Town Centre Conceptual Plan*
- *Commercial Hire Site Policy* – Reference No. 008*
- *Trading in Public Places Policy* – Reference No. 020*
- *Mobile Vendors on the Busselton Jetty Policy* – Reference No. 006*
- *Community Facilities Bookings Policy* – Reference No. 027
- *Markets Policy* – Reference No. 074
- *Events Policy* – Reference No. 231
- *Leases of City Land and Buildings Policy* – Reference No. 248

The policies above marked with an asterisk are envisaged for revocation and replacement by the draft policy and/or the subsequent more detailed Council policies and/or practices, procedures and guidelines that will follow, and a report setting that in more detail would follow Council's consideration of this report.

FINANCIAL IMPLICATIONS

The City's 2016/17 schedule of fees and charges contains a range of fees relevant to the scope of the proposed policy, as follows –

DESCRIPTION	ADOPTED FEE 2015/16 (Exc GST)	ADOPTED FEE 2016/17 (Exc GST)	ADOPTED FEE 2016/17 (Inc GST)
<u>PLANNING & DEVELOPMENT SERVICES</u>			
<u>HEALTH RELATED FEES</u>			
<u>Food Premises Fees</u>			
Application for Registration/ Notification of Food Premises	60.00	62.00	62.00
Review of Registration/Notification of Food Premises	58.00	60.00	60.00
Transfer of Registration Fee	60.00	62.00	62.00
Inspection fee - Low Risk	89.00	92.00	92.00
Inspection fee - Medium Risk	190.00	196.50	196.50
Inspection fee - High Risk	190.00	196.50	196.50
Inspection of premises on request	167.00	173.00	173.00
Copy of Food Sampling Results Certificate	26.00	27.00	27.00
Temporary Food Business assessment fee (per occasion)	33.00	40.00	40.00
Temporary Food Business assessment fee (annual)	New	180.00	180.00
<u>Stallholders</u>			
Application for Stallholders Permit Fee/Renewal of Stallholder's Permit Fee/ Transfer of Stallholders Permit			
per occasion	30.00	31.00	31.00
Up to 3 months	40.00	41.50	41.50
6 months	60.00	62.00	62.00
12 months	120.00	125.00	125.00
Application for Transfer of Stallholder's Permit	30.00	31.00	31.00
<u>Traders</u>			
Application for Trader's Permit	60.00	150.00	150.00
Application for Transfer of Trader's Permit	New	150.00	150.00
Itinerant Trader Permit Fee	800.00	2,500.00	2,500.00
Trader's Permit – Bond Fees	1,086.00	1,125.00	1,125.00
Trader's Permit Fee – Zone 1			
Prime sites (e.g. established coastal and foreshore nodes) as depicted within Trading in Public Places Policy			
3 months	200.00	750.00	750.00
6 months	400.00	1,500.00	1,500.00
12 months	800.00	3,000.00	3,000.00
Trader's Permit Fee – Zone 2			
Other sites as depicted within Trading in Public Places Policy			
3 months	200.00	500.00	500.00
6 months	400.00	1,000.00	1,000.00
12 months	800.00	2,000.00	2,000.00
<u>Outdoor Eating Facility</u>			
Application for Outdoor Eating Facility Permit	100.00	105.00	105.00
Outdoor Eating Facility Permit Fee/Renewal of Outdoor Eating Facility Permit Fee			
Minimum Outdoor Eating Facility Fee/ year - <10m2	50.00	52.00	52.00
Outdoor Eating Facility Fee/ year/ non liquor-licenced area - < 30m2	100.00	105.00	105.00

DESCRIPTION	ADOPTED FEE 2015/16 (Exc GST)	ADOPTED FEE 2016/17 (Exc GST)	ADOPTED FEE 2016/17 (Inc GST)
Outdoor Eating Facility Fee/ year/ non liquor-licenced area - > 30m2	250.00	260.00	260.00
Outdoor Eating Facility Fee/ year/ Liquor-licenced area - < 30m2	300.00	310.00	310.00
Outdoor Eating Facility Fee/ year/ Liquor-licenced area - > 30m2	500.00	518.00	518.00
Application for Transfer of Outdoor Eating Facility Permit	100.00	105.00	105.00
<u>Street Entertainers</u>			
Application for Street Entertainer Permit Fee/Renewal of Street Entertainer Permit Fee	0.00	0.00	0.00
<u>COMMUNITY & COMMERCIAL SERVICES</u>			
<u>EVENTS & CASUAL GROUND HIRE</u>			
<u>Commercial Use of Reserves (Sports Grounds)</u>			
Per day - plus power for use of site	377.27	390.45	429.50
Per half day - plus power for use of site	190.91	197.73	217.50
<u>Commercial Use of Reserves (Other Reserves)</u>			
Per day - plus power	195.45	202.27	222.50
Per half day - plus power	100.00	103.64	114.00
<u>Ground Hire Bonds (to be applied to Community Events)</u>			
Mandatory Bond against rent default, damage etc.:			
Ground Hire Bond (Other Reserves)	Fee	500.00	500.00
Premium Ground Hire Bond (Sporting Grounds, Foreshore)	Fee	1,000.00	1,000.00
<u>Wedding Ceremonies</u>			
Application Administration Fee - Applied to a Council Venue not	70.00	72.27	79.50
<u>Traders</u>			
Application for Trader's Permit	60.00	150.00	150.00
Application for Transfer of Trader's Permit	New	150.00	150.00
Itinerant Trader Permit Fee	800.00	2,500.00	2,500.00
Trader's Permit – Bond Fees	1,086.00	1,125.00	1,125.00
Trader's Permit Fee – Zone 1			
Prime sites (e.g. established coastal and foreshore nodes) as depicted within Trading in Public Places Policy			
3 months	200.00	750.00	750.00
6 months	400.00	1,500.00	1,500.00
12 months	800.00	3,000.00	3,000.00
Trader's Permit Fee – Zone 2			
Other sites as depicted within Trading in Public Places Policy			
3 months	200.00	500.00	500.00
6 months	400.00	1,000.00	1,000.00
12 months	800.00	2,000.00	2,000.00
<u>MISCELLANEOUS</u>			
<u>Commercial Use of Marine Berthing Platforms - Whale Watching / Tour Vessels</u>			
Monthly Fees (Maximum duration of use permitted) -			
Registered Length of Vessel: 0m to less than 10m	New	500.00	500.00

DESCRIPTION	ADOPTED FEE 2015/16 (Exc GST)	ADOPTED FEE 2016/17 (Exc GST)	ADOPTED FEE 2016/17 (Inc GST)
Registered Length of Vessel: 10m to less than 15m	New	550.00	550.00
Registered Length of Vessel: 15m to less than 25m	New	600.00	600.00
Registered Length of Vessel: over 25m	New	700.00	700.00
Annual Fees (Maximum duration of use permitted) -			
Registered Length of Vessel: 0m to less than 10m	New	3,500.00	3,500.00
Registered Length of Vessel: 10m to less than 15m	New	4,000.00	4,000.00
Registered Length of Vessel: 15m to less than 25m	New	4,500.00	4,500.00
Registered Length of Vessel: over 25m	New	5,000.00	5,000.00
Refundable Bonds -			
Registered Length of Vessel: 0m to less than 10m	New	2,500.00	2,500.00
Registered Length of Vessel: 10m to less than 15m	New	3,500.00	3,500.00
Registered Length of Vessel: 15m to less than 25m	New	4,500.00	4,500.00
Registered Length of Vessel: over 25m	New	6,000.00	6,000.00
<u>NATURALISTE COMMUNITY CENTRE</u>			
<u>NCC Grounds Hire</u>			
Commercial half day	New	109.09	120.00

The fees and charges set out above are established under the *Local Government Act*, and reflect the administrative cost associated with assessing and managing applications – they do not represent a return on the value of the land or infrastructure that the business uses and/or benefits from. The City does, however, have an ability to require a licence (or similar) to conduct activity on City land and can, through that process, effectively charge for the use of the land and infrastructure. This is discussed further in the ‘Officer Comment’ section of this report.

It should also be noted that some of the fees and charges set out above were increased, in some cases significantly, relative to the equivalent fee last financial year. In many instances, the new fees have not been implemented, in part because they assumed the completion of policy review that is not actually complete and/or because existing approvals have not yet lapsed. The more fundamental re-thinking and reassessment of policy direction that this report sets out has, however, also potentially identified a need to further review and reconsider the fees and charges – and it is envisaged that would occur as part of the preparation of the City’s 2017/18 budget.

Whilst it is considered that most of the fees and charges set out above are appropriate, there are concerns that some of them may be excessive when applied to certain classes or types of activity, and would render such activity unviable. The main area of concern is the application of the new Trader’s Permit fees to fitness classes or similar, where an annual fee of \$3,000 for a ‘Prime Site’ could conceivably represent 25-50% of total revenue for some existing operators (for that particular part of their operations).

Long-term Financial Plan Implications

There are no significant Long Term Financial Plan implications of the recommendations of this report. It is envisaged, though, that the recommendations of the report would have a positive, but relatively small and difficult to quantify, increase in the net financial return to the City, its residents and ratepayers, arising from the non-exclusive commercial use of City land. That increase would likely arise both from an increase in revenue and, once the new policy framework has been successfully

implemented, a reduction in costs (mostly associated with a reduction in what has now become a very significant allocation of officer time to management of these activities).

STRATEGIC COMMUNITY OBJECTIVES

This proposal aligns with the *City of Busselton Strategic Community Plan 2013 (revised 2015)* as follows:

- Key Goal Area 1 – Caring and Inclusive Community - A welcoming, inclusive, healthy and capable community that provides accessible services for all residents.
- Key Goal Area 2 – Well Planned, Vibrant and Active Places – An attractive City offering great places and facilities promoting an enjoyable and enriched lifestyle.
- Key Goal Area 3 – Robust Local Economy – A strong local economy that sustains and attracts existing and new business, industry and employment opportunities.

RISK ASSESSMENT

An assessment of the potential implication of implementing the officer recommendation has been undertaken using the City's risk assessment framework.

The assessment highlighted sought to identify 'downside' risks only rather than 'upside' risks and where the risk, following implementation of controls identified, is medium or greater.

<i>Risk</i>	<i>Controls</i>	<i>Consequence</i>	<i>Likelihood</i>	<i>Risk Level</i>
Reputational risk – Comparable activities proposed on City land with multiple application processes and fee structures	Streamlined approach to activities proposed on City land with consistent application processes and fee structures across all areas	Minor	Possible	Medium

CONSULTATION

A draft 'Trading in Public Places Policy' was advertised for public comment for a period of 8 weeks from 18 November 2015 until 15 January 2016. That included two advertisements being placed in a local newspaper and a letter being sent to all current permit holders advising of the consultation period. At the completion of the consultation period, 11 submissions were received from the following –

- 1 x Dunsborough- Yallingup Chamber of Commerce and Industry;
- 1 x Busselton Chamber of Commerce and Industry;
- 4 x current Trading in Public Places permit holders;
- 2 x current Commercial Hire Site permit holders;
- 1 x submission representing 2 fixed food businesses – Busselton;
- 1 x absentee owner – Dunsborough; and
- 1 x 'regular visitor to the region', supporting a particular food van.

The key issues raised in the submissions may be described as follows –

- Fairness –traders paying similar contributions to operate on public land in prime positions as business within fixed premises;
- Impact on business – This includes the impacts of traders on fixed rate-paying business and the impacts of traders on other traders. Comments included the City approving too many traders in close proximity to fixed business and to each other, the need for traders to be permitted for longer than 4 hour intervals and traders not being required outside large scale events;
- Location – the distance between traders and fixed business controls ('300 metre rule' *et al*) resulted in support from fixed business for an arbitrary distance to be implemented;
- Amenity – Residential property owners adjacent to predetermined locations raised issues with the visual impact of traders and the noise emanating from generators;
- Parking – Traders raised the uncertainty of finding parking for their vans in already popular carparks which occurs due to traders having to move after four hours or having to commence trading at times when cars are parked within the approved but not demarcated areas for traders. This often requires traders to park outside of approved areas or in locations that are unsafe for queuing pedestrians or other vehicles; and
- Expression-of-Interest Evaluation Process – issues were raised with the number of traders permitted at the then predetermined locations, traders not utilising their allocated positions and the current rolling over of the approval process being anti-competitive as it restricts new businesses from entering into the market particularly in prime locations.

OFFICER COMMENT

As noted in the 'Background' section of this report, following and as part of the process of considering issues raised during recent consultation about a draft 'Trading in Public Places Policy', officers had identified a need to re-think and reassess the proposed direction before officers would be in a position to recommend that the Council adopt the then draft policy in final form. That process of re-thinking and reassessment commenced with the identification and discussion of four key questions –

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

Each of these questions is outlined and discussed below, under relevant sub-headings, followed by a brief summary of the direction set out in the draft policy.

What types of activities need to be identified and considered?

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

- Mobile traders (i.e. traders that operate from particular locations for certain periods of time, e.g. the various food vendors that operate from time to time from a location like the King Street Car Park);
- Itinerant traders (i.e. traders that offer goods and services by travelling around the District, stopping only for as long as it takes to serve customers in a particular location, e.g. a 'Mr Whippy Van');

- *Al fresco* dining on footpaths or other City land adjacent or close to a permanent, fixed business (other than where this is facilitated via a lease);
- Recreational activities of various kinds (including fitness classes or similar - i.e. 'exercise permits' - and things like mobile climbing walls or water playgrounds);
- The running of tours or similar, which wholly or partly take place on City land and/or using City infrastructure (e.g. the jet boat tours which alight from the Busselton Jetty, and at times stop off in Meelup Regional Park);
- Businesses involved in the short-term hiring of recreational equipment, such as bikes, kayaks or jet skis; and
- Trading that operates from more or less temporary premises and/or from fixed premises, but on the basis of relatively short-term arrangements, such as trading from a converted/adapted sea container, or from some other relocatable and/or relatively low cost structure (although note that once there is a significant degree of 'permanence' associated with a business and/or structure in this kind of example, it becomes indistinguishable from a more conventional leasehold situation, described earlier in this report).

The draft policy does not, however, relate to the following kinds of activities -

- Events, and the trading activity associated with events;
- Markets;
- Buskers/street entertainers;
- Activities associated with the short-term hiring of City property (e.g. hiring a City building for a function);
- General sporting use of ovals or similar; or
- Leasehold use/development of City land.

The reason that the draft policy does not relate to those kinds of activities is because they are subject of separate policies and a range of other considerations often not directly relevant to the matters that are subject of the draft policy.

How are those activities regulated and managed currently?

The following is a summary of how the activities that are subject of the draft policy are regulated and managed currently.

Mobile traders (i.e. traders that operate from particular locations for certain periods of time)

These are currently governed by the *Activities in Thoroughfares and Public Places and Trading Local Law 2015* and applying the City Policy entitled *Trading in Public Places – Standard Conditions of Approval Policy*. When space is available for a trader at a predetermined location and there is no current permit holder selling the same goods or services at that location, permits are granted for applications as they are received. It should be noted that due to almost all predetermined locations being fully occupied, a moratorium for any new mobile traders has been in place at the City for approximately 6 months. Traders are generally not permitted to trade from any one location for more than 4 hours in any given day, and there are many locations where there are multiple, often overlapping approvals, and the current approach is now quite clearly unsustainable.

Itinerant traders (i.e. that offer goods and services by travelling around the District, stopping only for as long as it takes to serve customers in a particular location)

These are currently governed by the *Activities in Thoroughfares and Public Places and Trading Local Law 2015* and applying the City Policy entitled *Trading in Public Places – Standard Conditions of Approval Policy*. Permits are generally granted as they are received, and traders are not permitted to operate in central or high profile locations. This approach is still largely workable and appropriate.

Al fresco dining on footpaths or other City land adjacent or close to a permanent, fixed business

Alfresco dining licences were previously granted under the *City of Busselton By-law Relating to Eating areas in Streets and Other Public Places*; which was repealed concurrently with the gazettal of the *Activities in Thoroughfares and Public Places and Trading Local Law 2015*. Since this time, no permits or licences have been issued for alfresco dining, but there is a provision for this to occur within the new Local Law.

Recreational activities of various kinds (including fitness classes or similar, and things like mobile climbing walls or water playgrounds)

Exercise fitness classes are currently administered under the provisions of the *Local Government Property Local Law 2010* and applying the *Community Facilities Bookings Policy*. When there is no current exercise permit holder at that location and the trainer can provide proof that they are certified to provide the training, permits are granted for applications as they are received.

Other recreational pursuits are also administered under the *Local Government Property Local Law 2010* and applying the *Commercial Hire Sites Policy*. An Expression of Interest for available locations is advertised twice per year and businesses successful through this process enter into a license agreement with the City.

The running of tours or similar

These are currently, largely unregulated by the City of Busselton in practice, but do constitute trading activity on City land in some instances.

Businesses involved in the short-term hiring of recreational equipment

These are currently administered under the *Local Government Property Local Law 2010* and applying the *Commercial Hire Sites Policy*. An Expression of Interest for available locations is advertised twice per year and businesses successful through this process enter into a license agreement with the City.

Trading that operates from more or less temporary premises and/or from fixed premises, but on the basis of relatively short-term arrangements

These are currently administered under the *Local Government Property Local Law 2010* and applying the *Commercial Hire Sites Policy*. A business enters into a license agreement with the City while these arrangements are in place.

What are the regulatory options?

Much of the activity subject of this report consists of the sale of food and drink, requiring the registration of food premises pursuant to the *Food Act 2008*. Generally, that will require registration of the food premises with the City. That does not, however, allow them to trade as such in the City. That would require one or more of the other approvals or similar outlined and discussed below. Also note that the *Food Act* registration process does not provide a broader basis for regulating food businesses, it can only address food safety considerations.

Note that where trading involves mobile or itinerant food vans or similar, the same business may be operating in more than one local government area. In such cases, the food premises only needs to be registered with one local government pursuant to the *Food Act*, rather than all of the local government areas in which they may operate. As such, some mobile/itinerant food traders operating

in the City may be registered as a food premises with another local government (note that, in such cases, the City would require confirmation of a current registration before issuing a permit to trade as such).

Some of the kinds of activity subject of this report will involve use of land, infrastructure or buildings, use or development of which may, in some instances, require development approval (or 'planning approval' or 'planning consent' – the exact term best used has changed over time) pursuant to the *Planning and Development Act 2005* and/or a building permit pursuant to the *Building Act 2012*. In most cases, however, if such development is being undertaken by the proponent, it would require 'exclusive possession' of land, and would therefore require a lease, and as such would not be subject of the draft policy. Further, neither the *Planning Act* nor the *Building Act* provides a broader basis for regulating use of City land, but can only address development considerations. It is conceivable, however, that some activity subject of this policy will require a development approval and/or a building permit, in addition to one or more of the other approvals or similar outlined and discussed below.

The options that exist for the broader regulation of the non-exclusive commercial use of City land generally consist of –

1. Requirements for and powers to grant 'permits' pursuant to the *Activities in Thoroughfares and Public Places and Trading Local Law* and/or the *Property Local Law*;
2. Less well-described, but broader powers to enter into 'agreements' pursuant to those same local laws, which are in some respects closer to a 'licence', as described below; and
3. Powers to enter into 'licences', which can be registerable interests in land, either where the City has freehold title to land, or where the City has been granted 'power to licence' as part of a management order over Crown Land.

Most of the activities subject of the draft policy will require a 'permit', as set out in Option 1 above. Where there is identified to be a need/rationale to pay for the use of the City land and/or infrastructure over and above the value of the permit fee/charge set out in the Schedule of Fees and Charges, then there will also be a requirement for an 'agreement' or 'licence', as per Option 2 or 3 above. Option 3 will, however, only be necessary and appropriate where a significant investment is being made and/or there is a need for a registerable interest in land. Note that there is not currently a power to licence on all Crown Land that the City manages, and so if a licence is deemed necessary, it may need to be preceded by the obtaining of a power to licence.

In many cases, there will be a number of regulatory options and/or combinations of regulatory options that can be considered. The draft policy identifies as a guiding principle that, where there is more than one regulatory option, once it is clear that a particular activity or proposal is broadly supported, that the most administratively simple option, or combination of options, will be used. It is envisaged that administrative systems and procedures would be established to ensure that, other than in the most complex of cases, multiple approvals would be assessed and issued in a seamless fashion, and in many cases the applicant may not actually be aware that they have applied for and/or obtained multiple approvals. Food premises registrations, development approvals and/or building permits if required would, however, still be dealt with separately, although obviously in as coordinated a fashion as possible.

Both the *Activities in Thoroughfares and Public Places and Trading Local Law* and the *Property Local Law*, as well as establishing the requirement for a permit for certain activities and empowering the City to grant such permits, also effectively establish a right for someone intending to undertake such activities to make an application to do so. Any such application must then be assessed by the City in a fair, consistent, efficient and reasonable fashion, guided by the relevant considerations set out in the respective local laws. Where an applicant is not satisfied with a decision of the City, a right will exist for the applicant to lodge an application for review with the State Administrative Tribunal (SAT).

In the case of both local laws, policies adopted by the Council would be relevant and important considerations, particularly if they are properly made policies, consistent with the broader principles that need to be applied. If an application is submitted which is inconsistent with a policy that restricts or regulates particular kinds of activities in particular locations, the policy would generally be a reasonable basis on which to refuse the application. This is important because one of the proposed directions set out in the draft policy (and in the earlier draft policy) is a move from a largely reactive to a more pro-active approach to the granting of permits in many instances – through an expression-of-interest process - with *ad hoc* proposals not being supported in many cases. Such an approach would need to be supported by robust policy. The intended approach is discussed in a little more detail later in this report, but would need to be further defined as part of future policy/practice development and implementation.

What do we want to achieve? (Or, what should the policy objectives be?)

Officers have identified the following proposed objectives, which have guided development and form part of the draft policy –

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

It needs to be acknowledged that these objectives will not always align with each other, and in some situations, both in terms of the development and the application of policy, the different objectives will need to be balanced and assessed against each other. There is also seen to be a need to consider what some of these objectives might really *mean*, as otherwise they could be seen as mere ‘motherhood’ statements, which everyone would agree with in an abstract sense, but which actually mean quite different things to different people. Set out below is a discussion of two of the key objectives, Objectives 1 and 2, the ‘fairness’ objective and the ‘vibrancy’ objective.

The ‘fairness’ objective

The proposed ‘fairness’ objective (Objective 1) is as follows –

Achieving fair outcomes, in both procedural and outcome terms, in relation to the treatment of different businesses, business models and activities.

The fairness objective is perhaps the most difficult to grasp. For instance, is it ‘fair’ to allow a relatively low fixed cost business (such as a mobile trader) to sell, say, fish and chips, within proximity of a permanent, fixed business also selling fish and chips? If it is not, would it be fair to allow the mobile trader to sell hamburgers instead? Would it be fair to prevent someone developing the low-cost business, who perhaps has less access to capital than the owner of the permanent, fixed business does, or who perhaps will provide a more convenient service to some customers than is provided by the permanent, fixed business? Is it fairer to have the mobile business further away from

the fixed business, thereby discouraging people from making a choice to shift their custom from the fixed to the mobile business, or is it actually fairer to locate the businesses closer to each other, providing greater opportunity for the owner of the fixed business to attract custom away from the mobile business?

There are not actually clear or objective answers to these questions, especially in an abstract or conceptual sense, and the perception of what may be fair or not, in a given situation, will often depend upon the perspective of those making the judgement. What is very clear, though, is that 'rules' requiring that mobile or low cost businesses not be located within some specified distance of an equivalent, permanent, fixed business, whilst perhaps creating an impression of greater fairness in the minds of the owners of that business (possibly, because it makes it harder to actually see or develop an awareness of the trade being generated by the mobile business which might otherwise come to their business), may well –

- Not actually deliver better business outcomes for permanent, fixed businesses (for example, they may result in activity shifting away from where the business is located);
- Undermine other City objectives, for instance to activate public space; and
- Not have a sound basis in the broader policy and administrative principles that should be applied (which essentially require that regulations be developed and applied in a manner that seeks to achieve legitimate policy objectives, but not seek to specifically regulate competition between different businesses).

What is also clear, though, is that, unless it is necessary to achieve legitimate policy objectives, the City should not make public land available for business activity in a way that involves an effective 'subsidy' of a private business, including a private business that may, to some degree, be competing with another business that does not enjoy the same subsidy. If the City was actually paying money to a business, where that payment was not associated with the purchase of a good or service, that would clearly constitute a subsidy, and could be described as an 'explicit subsidy'. An example of where this occurs is the City's support for some events, which clearly constitute subsidies; but equally clearly, there is a sound policy basis for subsidies of this kind, e.g. to encourage events that will build community and/or attract visitors to the District and deliver economic benefits. Another example is the City's Façade Refurbishment Subsidy Programme, which is intended to encourage refurbishment and improvement of building facades in key City and Town Centre locations, and therefore to improve the attractiveness of those locations, the ultimate purpose of which is to achieve better social and economic outcomes for the community as a whole.

More difficult to identify and assess, though, are what could be described as 'implicit subsidies'. An example of an implicit subsidy is the benefit that a mobile food van obtains as a result of the infrastructure developed by the City in a location like Meelup Beach, in the form of the access roads, car parking, ablutions and landscaping that allow the trader to access that location and make the location more attractive for their customers. Where commercial activity occurs on private land or on City land via leasehold arrangements, in most cases the value of the land and infrastructure being utilised will effectively be 'embedded' in the costs incurred by the business (as the value of the land or property will then be a key determining factor in the cost of a lease over the land/property and the level of local government rates to be paid). In those situations, there is no implicit subsidy (note that it is not quite that simple, for instance, a local government when leasing land may agree to reduced or rent free periods in some situations to achieve broader and/or longer term objectives, or the City may upgrade infrastructure in particular locations and the costs of doing so will not be met entirely by the principal 'beneficiaries', but rather will be met from general sources of income – mostly rates and grants).

Where commercial activity occurs on City land via other (i.e. non-leasehold) arrangements, though, the value of the land and infrastructure will not necessarily be embedded in the costs incurred by the business, including through the fees and charges that currently have to be paid to the City for the

approvals required for the business to operate. The result of this is that some commercial activity occurring on City land may, in some cases, be enjoying implicit subsidies which other businesses are not, and those subsidies may not actually assist in achieving legitimate policy objectives. Where that is occurring, it is arguable that the outcome is not 'fair', and if there is a desire to achieve 'fairness', there needs to be a focus on identifying what and where implicit subsidies may exist, determining whether those subsidies are necessary and/or appropriate to achieve other policy objectives, and then designing a framework that, to the extent reasonably possible, removes those implicit subsidies by ensuring that those using City land for commercial purposes are charged an amount equivalent to what would otherwise be an implicit subsidy to that business.

Note that there may, in fact, in some instances be regulatory barriers that prevent the City from setting fees and charges at a level that would embed the value of the land and infrastructure in the costs of the business. Furthermore, there are significant difficulties, in many instances, in actually determining what and whether an implicit subsidy exists, and the value that should be attached to the land and infrastructure being used by the business. In addition, it needs to be understood that a particular business or business model may simply be better, more efficient and/or have a lower cost base than an alternative, and the City should not intervene in a way that handicaps or constrains that business for the purpose of regulating competition.

Partly as a mechanism to reduce or remove implicit subsidies that may not achieve legitimate policy objectives (and therefore as a way of achieving 'fairer' outcomes), it is proposed that the City move further away from 'reactive' approaches to managing commercial use of City land, and move towards more 'proactive' approaches. In relation to leasehold use of City land, and in relation to events and markets, the City's approach has been generally proactive for some time, but it has been more reactive in relation to many of the other kinds of commercial activity now being undertaken or contemplated.

More specifically what is proposed is that, in most cases, rather than simply accepting and assessing applications on an *ad hoc* basis, the City invites expressions-of-interest for the use of particular parcels of City land, first identifying specific criteria for the assessment of those applications. One of those criteria may be the value of the licence (or 'agreement') payment proposed by the applicant for the use of the land/property, which would address both the fairness and financial return objectives proposed earlier in this report (and there would be other criteria that would seek to address the other objectives).

The 'market' would then, in part, determine the 'value' of the site, and reduce or remove any implied subsidy that does not address another legitimate policy objective. In a 'mature' market, where costs, benefits and processes are broadly understood, and where there is likely to be competition for all sites, it may be possible to simply invite expressions-of-interest, and allow the market on its own to set licence values. It is not, however, considered that a mature market exists at present and, as such, minimum licence values are generally recommended to be adopted before expressions-of-interest are invited.

Note that, because entering into a licence or other non-exclusive ability to use land is not a disposal as contemplated by s3.58 of the *Local Government Act 1995*, there is no statutory requirement for the City to be guided by a licensed valuation in determining the value. The City may, though, in some instances, wish to obtain valuation advice to assist with decision-making.

The 'vibrancy' objective

The proposed 'vibrancy' objective (Objective 2) is as follows –

Preserving and enhancing the vibrancy and attractiveness of City, Town and other activity centres, and other important public spaces, such as the Busselton and Dunsborough Foreshores.

Key to understanding the proposed vibrancy objective is having an understanding of the extent to which the development of new services or businesses will add to the overall level of demand (and therefore generate economic and employment growth), and the extent to which the development of new services or businesses will simply shift demand from existing business/es to new business/es. This of course also needs to be understood in the context of a population and economy that are both, broadly speaking, growing rapidly and consistently in any case, so overall across the District demand is growing (although not for every conceivable good and service at the same time, and not always in an incremental or linear way; in fact, unlike demand, supply can often increase very rapidly – for instance, if a new supermarket is developed - and then remain relatively static for a period, until demand catches up again, or effective supply can be increased in ways that are not readily observable, with the growth of online retail being an example of that).

The fact remains though that, at any point in time, there is a limit to the total amount of demand and, whilst some increases in supply may lead to an increase in effective demand, many will not (for instance, in a place like Busselton, without a full-size Discount Department Store, a new Discount Department Store will add to total local demand, as it will shift some local demand from similar stores outside the District to the new store in the District; but a new or expanded hardware store, in a location already reasonably well served by hardware stores, may simply change the distribution of demand, with demand gravitating to the business/es that consumers prefer). That does not mean that a local government can or should seek to limit or manage business investment generally; but a local government can legitimately seek to guide or direct where business activity and investment occurs to achieve legitimate policy objectives not linked to the success of one particular business or another.

One legitimate policy objective is preserving and enhancing the vibrancy and attractiveness of activity centres (such as the Busselton City Centre and Dunsborough Town Centre), and other public places (such as the Busselton Foreshore). Allowing too much activity, especially significant concentrations of activity, outside the preferred locations that the local government has identified that it wants to activate can, in fact, and in many cases will, undermine that objective. As a result, those locations may be less activated and vibrant, and may cease or fail to perform their roles as genuine hubs for our community, in an economic, social, recreational, cultural and transport sense. The alternate centres of activity that instead emerge will often either not be large enough to perform the same role and/or the centres that emerge will be ‘hollow’, serving as economic hubs only or primarily, but not meeting the other needs. Local government and government in general has a legitimate role to ensure that does not occur, and that genuine community hubs are developed and preserved, even when that may conflict with particular commercial interests. It is, however, essential that any regulation of supply, or of the location of supply, be done primarily at the strategic and policy level, and not at the level of the individual business, development or proposal.

Again, as a means of ensuring that ephemeral types of activity do assist with, rather than detract from, the vibrancy and attractiveness of activity centres and other important public places, the proposed shift towards a more proactive approach will assist, with a framework to establish limits in terms of the total number of sites where certain types of traders will be permitted, and restrictions on the total numbers of traders that may operate in particular locations also being possible.

Summary of direction set out in draft policy

The direction set out in the draft policy may be summarized as follows –

1. Establishes overarching objectives to guide future decision-making in relation to non-exclusive commercial use of City land;
2. Establish guiding principles for the administration of the policy;
3. Reduce barriers to activity where there is a strategic interest in facilitating the activity;

4. Move from a largely reactive to a more pro-active approach, utilising an expression-of-interest process, where there is competition for space/sites (including with other kinds of uses, such as general public recreation or public car parking requirements) and/or concerns that activity should be managed carefully and/or not be supported in certain locations; and
5. Still providing for some novel or *ad hoc* proposals, but only where it is clear that they are supportable, given the broader policy direction, and/or to trial a new kind of activity and/or location.

CONCLUSION

Council is presented with a policy that provides a consistent framework and methodology to facilitate, control and regulate the non-exclusive commercial use of City owned and managed land across the District – which would then be supplemented by further, more detailed work, before the new policy approach is implemented in the lead up to next financial year.

OPTIONS

Council may determine not to endorse the draft policy, require changes and/or request further information.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation will require further and more detailed work by officers, and some further Council consideration/direction, with the aim being that the new policy approach would be implemented by the end of the financial year.

OFFICER RECOMMENDATION

That the Council, with respect to the non-exclusive commercial use of City land–

1. Adopt the *Policy on Non-Exclusive Commercial Use of City Land*, as provided at Attachment A;
2. Foreshadow the development of more detailed supporting policies and/or practices, procedures and guidelines, prior to the implementation of the new policy, including identification and review or necessary delegations and authorisations to enable effective implementation; and
3. Foreshadow a review of the relevant elements of the schedule of fees and charges as part of the preparation of the City's 2017/18 budget.

NON-EXCLUSIVE COMMERCIAL USE OF CITY LAND

PURPOSE

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

BACKGROUND

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

SCOPE

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

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

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

- Events, and the trading activity associated with events;
- Markets;

- Buskers/street entertainers;
- Activities associated with the short-term hiring of City property;
- General sporting use of ovals or similar; or
- Leasehold use/development of City land.

STATUTORY/POLICY ENVIRONMENT

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

OBJECTIVES

1. Achieving fair outcomes, in both procedural and outcome terms, in relation to the treatment of different businesses, business models and activities;

2. Preserving and enhancing the vibrancy and attractiveness of City, Town and other activity centres, and other important public spaces, such as the Busselton and Dunsborough Foreshores;
3. Providing convenient and attractive services to residents and visitors;
4. Encouraging innovation, new business development, and economic and employment growth;
5. Generating financial return to ratepayers associated with use of City land and infrastructure;
6. Supporting the delivery of other City strategies and objectives; and
7. Ensuring legal robustness, simplicity and comprehensibility, and administrative efficiency and workability.

GUIDING PRINCIPLES FOR IMPLEMENTATION

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

ADMINISTRATION OF THIS POLICY

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

Policy Background

Policy Reference No. –

Owner Unit – Environmental Health

Originator – Manager Environmental Services

Policy approved by – Council

Review Frequency – As required

7. GENERAL DISCUSSION ITEMS

7.1 OPERATIONAL USE OF CORPORATE CREDIT CARDS

SUBJECT INDEX:	Financial Operations
STRATEGIC OBJECTIVE:	An organisation that is managed effectively and achieves positive outcomes for the community.
BUSINESS UNIT:	Finance and Corporate Services
ACTIVITY UNIT:	Finance
REPORTING OFFICER:	Financial Compliance Officer - Jeffrey Corker
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Operational Practice & Procedure of Corporate Credit Cards ↓

In the wake of a recent CCC investigation into the financial operations of a rural Shire Council, it is considered appropriate to provide Council with a copy of the City of Busselton's Operational Practice and Procedure - FIN103 (OPP) Operation of Corporate Credit Cards (Attachment A), for Councillor's information.

The OPP was initially authorised by the CEO in November 2011, formalising an internal Policy that had been in place since May 2003. The OPP has been recently reviewed to ensure its currency, including review against the Department of Local Government and Communities "Local Government Operational Guidelines Number 11 – Use of Corporate Credit Cards".

The OPP provides strong security over the use of City Credit cards, including a separation of duties between staff possessing cards and those responsible for processing the payment of expenses incurred. Restrictions are placed upon the use of cards so as to not circumvent the City's Purchasing Policy and Procedures, and to reduce the opportunity for misuse. The monthly "List of Payments Made", as noted by the Finance Committee and in turn by full Council; includes a complete list of all payments made upon the credit card. Additionally, the CEO's expenditure is separately disclosed in the monthly Financial Information Bulletin.

OFFICER RECOMMENDATION

That the Policy and Legislation Committee notes the Operation of Corporate Credit Cards information.



OPERATIONAL PRACTICE AND PROCEDURE

FIN 103 (OPP) OPERATION OF CORPORATE CREDIT CARDS

PURPOSE

To define the authority for, and to set out the administrative requirements of, the use of the Corporate Credit Cards for the carrying out of City business.

SCOPE

Whilst this practice and procedure principally applies to those staff provided with a corporate credit card, it does have relevance to all staff associated with procurement processes utilising a City of Busselton Corporate Credit Card.

DEFINITIONS

For the purpose of this practice and procedure the following definitions apply:

- Corporate Credit Card – A credit card supplied by the City's Bank which is linked to City's Corporate Credit Card facility;
- Tax Invoice / Receipt – a document in the format prescribed by the Australian Tax Office (ATO) detailing the nature and amount of the expense. Credit Card slips and EFTPOS machine documents normally will not be in the format prescribed by the ATO.

RESPONSIBILITIES

Responsibilities are carried at each level in the City with respect to the proper operation of Corporate Credit Cards; as follows:

Chief Executive Officer

- To approve the Operation of Corporate Credit Cards practice and procedure, including amendments that may be required from time to time.
- To approve the provision of a Corporate Credit Card to any officer other than a Director.
- To enforce the terms of this practice and procedure; for example in relation to the withdrawal of card for repeated incorrect use (as detailed within this practice and procedure).


Directors

- To seek the approval of the Chief Executive Officer in circumstances where the issue of a card to another officer can be fully justified, and to periodically review the provision of such a card.

Card holders

- To abide by this practice and procedure.
- To ensure their Cardholder acknowledgement is current.
- To ensure their use of a card does not circumvent the requirements of the City's Purchasing Policy, and to provide evidence of such compliance where appropriate (for example through the provision of proof of meeting Quote requirements).
- To ensure their card is current and maintained in a useable manner.



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- To ensure that the required invoices and / or receipts are provided to the relevant Finance staff members on a timely basis.
 - Where a cardholder approves the use of their card for purchases for another officer, that each such use is authorised PRIOR to the expenses being incurred.
 - To ensure the security of the card to minimise the opportunity of fraudulent or improper use.

Human Resources

- To maintain on the employee's record that they have been provided with a Corporate Credit Card.
- To advise relevant Finance staff when a new card is required for a new staff member.
- To advise relevant Finance Staff when a card is required to be returned by a staff member who is no longer entitled to that card.

Finance

- To ensure a card is made available when instructed.
- To ensure that the cardholder completes the Cardholder Acknowledgment form when required.
- To review purchases / card use on a monthly basis.
- To ensure Cardholders are providing the required Credit Card Purchase Request Forms and proof of compliance with the City's Purchasing Policy, Invoices and / or Receipts as required facilitating payment.
- To advise the Chief Executive Officer of any suspected misuse of any Corporate Credit Card.
- To ensure that the account associated with the use of the cards is paid in a timely manner.
- To ensure that, upon advice, returned cards are properly cancelled and destroyed.

PRACTICE CONTENT & PRINCIPLES

Principles underpinning this practice and procedure include-

- Corporate Credit Cards are a device issued to staff for the efficient delivery of City business services.
- Corporate Credit Cards are for official City business purposes only and must not under any circumstances be used for private purposes other than those detailed within the practice and procedure.
- Corporate Credit Cards should be used in accordance with the requirements of the Law and the City's Purchasing Policy and should not be used to circumvent the Purchasing Policy; for example the requirement to obtain quotes as appropriate and to issue an order.

PROCEDURE

Authorised Holders of Corporate Credit Cards

The following officers are authorised to hold and use Corporate Credit Cards for City business:

- The Chief Executive Officer;
- Directors;

- Any other officer as approved by the Chief Executive Officer.

Credit Card Limits


Pursuant to Section 6.20 of the Local Government Act, the overall limit for the Corporate Credit Card Account is required to be approved by the Council. However, individual card limits will be determined by the Chief Executive Officer, taking into consideration changing circumstances and the scope of duties of the employee concerned. The following limits are representative current limits that apply to Corporate Credit Cards:

- Overall Account and the Chief Executive Officer's card - \$50,000
- Directors (individual) - \$10,000
- Other Officers (individual) - \$5,000

Use and Restrictions

The following uses and restrictions shall apply to the use of the Corporate Credit Cards:

- The cards are for official City business only and are not to be used for 'private' purposes.
- Incidental 'private' use (e.g. private telephone calls as part of an overall accommodation bill) is permitted, however these amounts must be clearly identified on the invoice prior to it being passed onto the City's Accounts Payable section for processing. The Card Holder who incurs these costs is to promptly reimburse these amounts to the City.
- Cash withdrawals must not be made from Corporate Credit Cards under any circumstances.
- A Corporate Credit Card may be used for:
 - Travel, accommodation and entertainment expenses when on official City business;
 - Where Cash on Delivery (COD) or other special purchase requirements necessitate this payment method;
 - In specific circumstances where immediate payment is required;
 - Where payment by Credit Card is advantageous to the City (e.g. discounts offered for immediate/ early payment);
 - Overseas purchases that would otherwise require payment by overseas bank draft of telegraphic transfer;
 - Where no alternative method of payment is accepted;
- Corporate Credit Cards are not to be used for normal day-to-day City business or to circumvent the City's standard purchasing procedures. This includes the use of a Card solely for "convenience purposes".
- A "Credit Card Purchase Request" Form (as attached - Credit Card Practice & Procedure Form 1) is to be completed for all purchases on the credit card and submitted with the Tax Invoice / Receipt to the Accounts Payable Section.



Management of Credit Cards

- **Cardholder Acknowledgement**

Before issuing a Corporate Credit Card to an authorised holder they are required to sign an "Authorised User Acknowledgment" statement (as attached - Credit Card Practice & Procedure Form 2). In signing this form the holder of the Corporate Credit Card acknowledges that they are aware and understand the conditions under which it is issued, and agree to comply fully with this practice and procedure. A cardholder is required to renew Acknowledgement upon the revision of this OPP and also upon the receipt of a replacement card. As a guide, Acknowledgement should be completed at a minimum of once every three years.

- **Possession of the Card**

The officer to whom a Corporate Credit Card is issued is responsible and accountable for that card. It is that Officer's responsibility to ensure that they have control of the Card at all times and has approved all purchases made on their card prior to the expense being incurred.

- **Leaving Staff**

In the event that a Card holder leaves the employ of the City, the Corporate Credit Card is to be surrendered to the Director, Finance & Corporate Services (or his or her nominated representative) on or before the Card holder's final 'effective' working day. That is, where a period of leave or other authorised absence immediately precedes the formal resignation date, the Card is to be surrendered prior to the commencement of that period of leave or authorised absence.

The card provider shall be requested immediately to cancel the card, and the card shall be physically destroyed. A cards surrender and destruction shall be recorded on the "Acknowledgment of Return and Destruction of City of Busselton Corporate Credit Card" form (as attached - Credit Card Practice & Procedure Form 3).


- **Lost or Stolen Cards**

Cardholders shall report the loss or theft of a Corporate Credit Card to the Card provider and obtain proof of the report. The loss or theft should then be reported to the Director, Finance & Corporate Services at the earliest possible occasion, along with the proof of the report to the Card provider.

Administrative Requirements

It is the responsibility of the Card holder to ensure that both the receipt and the credit card slip is retained and forwarded to the Accounts Payable section as soon as possible. Please note:

- The Card holder must obtain a tax invoice / receipt for all purchases for GST purposes. It is not sufficient just to retain the credit card slip.
- If ordering over the telephone, fax or internet the Card holder must ensure they possess a proper Tax Invoice / Receipt or request one be provided.

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- In the event that a tax invoice / receipt is lost or cannot be provided; the card holder must supply a signed declaration detailing the cost, otherwise they will be personally liable for the expense. Relevant GST restrictions must be considered when processing payment for any purchases where a tax invoice / receipt cannot be provided.
 - The Card holder is to fully complete and sign a Credit Card Purchase Request Form for all expenditures incurred, to which a relevant tax invoice / receipt is to be attached, prior to on-forwarding to the Accounts Payable Section.
 - If the expenditure relates to meals / functions, then the following information must also be provided for FBT purposes:
 - List of persons who attended;
 - Whether the person is an employee;
 - Purpose of the function / meeting.

Payment of Credit Card

The expenses incurred as shown on the monthly Corporate Credit Card Statement will be processed as follows:

- The Accounts Payable Section will match the Tax Invoices / Receipts, Credit Card Slips and Credit Card Purchase Request Forms with the items listed on the monthly Credit Card Statements.
- If all items are properly and full accounted for there will be no further reference to the holder of the card, and the statement will be paid in full.
- Card holders will be requested to account for entries on card statements that are not fully and properly supported by Tax Invoices / Receipts, Credit Card Slips, and Credit Card Purchase Request Forms.
- Recovery action will ensue against the Card holder for expenditure on any non-accounted for items, or any items purchased that contravene the permitted use of the card as detailed in this practice and procedure, or as otherwise varied.

Incorrect Use of Card

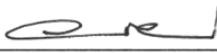
Repeated incorrect use or serious misuse of a Corporate Credit Card by a Card holder or any other employee will result in the withdrawal of the Card from the Card holder and may, subject to due process, result in disciplinary action which could, at the most serious level, include termination of employment. A Card holder will be liable for all expenditure incurred on their Card found not to be authorised or allowed.



Practice and Procedure Background

Owner Unit –	Finance and Information Technology
Originator –	Finance
Procedure approved by –	CEO
Date Created –	May 2003
Date Reviewed -	November 2011
Review Frequency –	Two yearly
Related Documents –	Purchasing Policy Code of Conduct Policy Local Government Act ANZ Bank Corporate Credit Card Terms and Conditions

Background/History	November 2011 - The creation of this practice and procedure intends to formalise the current internal policy and forms, as approved by the CEO in May 2003
	October 2016 – Policy reviewed and revised, increasing focus on compliance with the Purchasing Policy and strengthening Cardholder responsibility.

Endorsed by CEO:  Date: 14.10.2016





Operation of Corporate Credit Cards Practice & Procedure - Form 1

City of Busselton

Credit Card Purchase Request Form

DATE	
AMOUNT	\$
GST	\$
TOTAL (Inc GST)	\$
Supplier Details	
Supplier Address	
Details of Purchase	
Reason Justifying Credit Card Use (Please note - Use must conform with both the Operation of Credit Cards OPP and the City's Purchasing Policy and Procedures)	
Purchasing Policy Requirements Met	VERBAL QUOTE <input type="checkbox"/> WRITTEN QUOTE <input type="checkbox"/>

**TAX INVOICES / RECEIPTS MUST BE PROVIDED IN ALL CASES
PLEASE ATTACH COPIES OF WRITTEN QUOTES WHERE REQUIRED BY THE PURCHASING POLICY**

Creditors Costing Ledger Account	A/c String (1): _____
	Or Professional Development Account: _____

Requesting Officer's Name : _____

Requesting Officer's Signature: _____

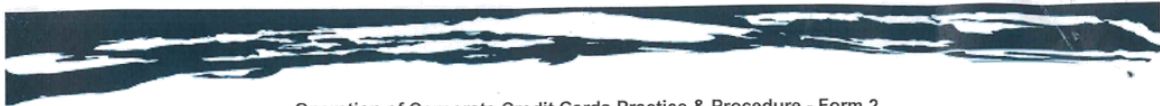
Card Holder's Name : _____

Card Holder's Signature: _____

AUTHORISED / NOT AUTHORISED

This form should be attached to the Credit Card Slip and the Tax Invoice / Receipt for your Purchase and passed on to the Creditor Department as soon as possible.





Operation of Corporate Credit Cards Practice & Procedure - Form 2

City of Busselton
Authorised User Acknowledgement

Having been provided with a City of Busselton Corporate Credit Card numbered _____ I hereby acknowledge that I have been given a copy of and have read the practice and procedure "Operation of Corporate Credit Cards" and as an Officer authorised to use a City of Busselton Corporate Credit Card that I am aware:

- Of the restrictions that apply to the use of the Credit Card;
- Of the requirement to obtain a Tax Invoice / Receipt for all transactions;
- Of the requirement to complete a Form 1 "Credit Card Purchase Request Form" for all transactions;
- Of the Requirement to pass the Tax Invoice / Receipt, Credit Card Slips, and Form 1 "Credit Card Purchase Request Form" to the Accounts Payable Section as soon as possible prior to the end of the month;
- That the card is to be used only according to the limits permitted for my use and for official City purposes where I am so authorised by formal instrument;
- That the card is not to be used for private purposes and that no cash withdrawals are permitted;
- That should some portion of business expenditure be of incidental private nature (e.g. private telephone calls on an accommodation bill) that these will be clearly identified by me and reimbursed promptly by me to the City as requested;
- That I agree to abide by all other provisions placed upon the issuing of this card, and as provided by the "Operation of Corporate Credit Cards" Practice and Procedure.
- terms and conditions relative to the card as imposed on the City by the Credit Card Provider.

Authorised Holder of Corporate Credit Card

(Signature)

(Print Name)

(Date)

Chief Executive Officer

(Signature)

(Print Name)

(Date)





Credit Card Policy Form 3

**Acknowledgement of Return
And Destruction of
City of Busselton Corporate Credit Card**

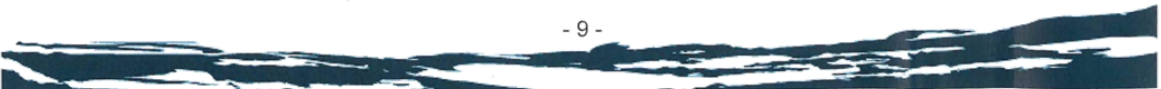
The undersigned hereby acknowledge that City of Busselton Corporate Credit Card

numbered _____ in the name of

was returned and destroyed in their presence on _____.

(Please insert or attach photocopy of destroyed card)

Signed: _____
Name: _____
Position: _____
Date: _____



8. NEXT MEETING DATE

Thursday, 17 November 2016

9. CLOSURE