

Policy and Legislation Committee Agenda

22 June 2022

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city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 22 JUNE 2022

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the Committee Room, Administration Building, Southern Drive, Busselton on Wednesday, 22 June 2022, commencing at 10.30am.

The attendance of Committee Members is respectfully requested.

DISCLAIMER

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



TONY NOTTLE

ACTING CHIEF EXECUTIVE OFFICER

16 June 2022

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 22 JUNE 2022

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1. **DECLARATION OF OPENING, ACKNOWLEDGEMENT OF COUNTRY AND ANNOUNCEMENT OF VISITORS**

2. **ATTENDANCE**

Apologies

3. **PUBLIC QUESTION TIME**

4. **DISCLOSURE OF INTERESTS**

5. **CONFIRMATION AND RECEIPT OF MINUTES**












5.1 **Minutes of the Policy and Legislation Committee Meeting held 25 May 2022**

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 25 May 2022 be confirmed as a true and correct record.

6. REPORTS

6.1 PROPOSED AMENDMENTS TO THE CONSOLIDATED PARKING SCHEME (CPS)

STRATEGIC THEME	LIFESTYLE - A place that is relaxed, safe and friendly with services and facilities that support healthy lifestyles and wellbeing
STRATEGIC PRIORITY	2.10 Provide local road networks that allow for the safe movement of people through the District.
SUBJECT INDEX	Consolidated Parking Scheme
BUSINESS UNIT	Environmental Services
REPORTING OFFICER	Ranger & Emergency Services Coordinator - Ian McDowell
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A CPS Amendment Queen Street   Attachment B CPS Amendment Castle Rock Road 1   Attachment C CPS Amendment Castle Rock Road 2   Attachment D CPS Amendment Castle Rock Road 3   Attachment E CPS Amendment Smiths Beach SLS   Attachment F CPS Amendment Barnard Park West   Attachment G CPS Amendment Old Tennis Club   Attachment H CPS Amendment Smiths Beach Road Congestion   Attachment I CPS Amendment Smiths Beach Road No Stopping  

OFFICER RECOMMENDATION

That Council, pursuant to clause 2.1 of the City of Busselton Parking Local Law 2020, approves the following amendments to the Consolidated Parking Scheme:

1. Designation of two parking bays in Queen Street outside St Mary's Church, as shown in Attachment A, as *"No Parking, 9am to 5pm Mon to Fri, Hearses Excepted"*;
2. Designation of both sides of Castle Rock Road in Meelup Regional Park, as shown in Attachments B, C and D, as *"No Parking, Road or Verge"*;
3. Designation of an area close to the beach access gate to Smiths Beach, as shown in Attachment E, as *"No Parking, 7am to 12pm Sun, Oct to Apr, Surf Life Saving Vehicles Excepted"*;
4. Designation of one parking bay in the Barnard Park West western car park, as shown in Attachment F, as *"No Parking, 6am to 6pm Mon to Fri, Authorised Vehicles Excepted"*; and
5. Designation of the following special purpose parking bays in the Old Tennis Club car park, as shown in Attachment G, as follows:
 - (a) five new disabled parking bays located within the car park;
 - (b) two loading zones on the northern side of Foreshore Parade; and
 - (c) one bus zone on the northern side of Foreshore Parade.
6. Amending the designation of both sides of Smiths Beach Road, as shown in Attachment I, from *"No Stopping"* to *"No Stopping, Road or Verge"*.

EXECUTIVE SUMMARY

This reports presents a number of proposed changes to the Consolidated Parking Scheme (CPS) pursuant to Clause 2.1 of the City of Busselton Parking Local Law 2020.

BACKGROUND

The CPS is an administrative document and series of maps that detail car parking restrictions across the local government district. Restrictions include timed parking zones, no parking/no stopping zones, and special purpose parking zones including disabled parking bays, loading zones, taxi zones, and bus zones. The current version of the CPS was endorsed by the Council in February 2018 (CC1802/21) however, there have been some minor amendments to the CPS since that time.

The City of Busselton Parking Local Law was last reviewed in 2020. Under the provisions of the previous version (2010) of the Parking Local Law, the authority under clause 2.1 to determine parking stalls, parking stations and parking areas, approving amendments to the CPS, was delegated to the City's Chief Executive Officer.

Under this delegation amendments to the CPS did not occur without first consulting with Councillors. Prior to a change being made Councillors were provided written notice of the proposed change, and if they considered it appropriate to do so, could request a report be presented to the Council for their consideration.

During the review of the Parking Local Law in 2020, the Department of Local Government, Sport and Cultural Industries advised that the power to make determinations under clause 2.1 of the Local Law could not be delegated. As a result of this all amendments to the CPS, even those that are relatively minor in nature, require a resolution of the Council before taking effect.

OFFICER COMMENT

No Parking (Hearses Excepted): St Mary's Anglican Church, Queen Street - Attachment A.

St Mary's Anglican Church (the Church) has approached the City requesting that two of the Queen Street parking bays outside the Church be reserved for hearse parking only, Monday to Friday. Prior to the recent roundabout works at the intersection of Queen Street and Peel Terrace, the first of these two bays had the word "reserved" spray painted on the road however, the wording had faded and was not enforceable.

Currently, the two bays in question have no restrictions meaning motorists can park there all day. Anecdotally, employees of nearby businesses in Queen Street utilise these bays all day on a daily basis causing issues for the Church when funeral services are scheduled. In August 2021 for example, a funeral director (parked in the first bay) but was unable to remove the deceased from the hearse as another vehicle parked in the second bay behind the hearse was causing an obstruction.

Officers support the request from the Church and propose to regulate parking in the first two bays outside the Church in Queen Street (as shown in Attachment A) by designating them: *"No Parking, 9am to 5pm Mon – Fri, Hearses Excepted."* The change would not have a significant impact on overall parking availability or supply in the Busselton City Centre.

No Parking Road or Verge: Castle Rock Road - Attachments B, C and D.

The demand for parking at Castle Rock beach during peak holiday periods is high. This creates a hazardous situation when motorists, unable to park in the beach car park, park on both sides of Castle Rock Road. This has the potential to obstruct access for emergency service vehicles attending emergency incidents in the area. There is also an added risk of hot exhausts from vehicles parked over dry vegetation causing a bush fire.

To mitigate the risk on Boxing Day and Australia Day, traditionally two of the busiest days at Meelup Regional Park, from 2016/17 to 2020/21 the City controlled vehicular access to Meelup Regional Park through the implementation of vehicle check points at either end of Meelup Beach Road at an approximate cost of \$4,500 per day.

It should be noted that part of the rationale for controlling access to Meelup Regional Park, on Boxing Day and Australia Day, was to discourage large gatherings of people who were at times engaging in anti-social behaviour. This strategy appears to have worked with incidents of anti-social behaviour greatly reduced over the past five years.

As a means of better controlling the hazards associated with vehicles parking along Castle Rock Road on a permanent basis, rather than just Boxing Day and Australia Day each year, this report proposes to prohibit parking along Castle Rock Road (as shown on Attachments B, C and D) by designating it *"No Parking, Road or Verge"*.

No Parking (Surf Lifesaving Vehicles Excepted): Smiths Beach - Attachment E.

The Smiths Beach Surf Lifesaving Club (SLC) has approached the City requesting a 24 metre length of the gravel road shoulder, adjacent to the beach vehicle access ramp be reserved for SLC vehicle parking only, from 7am to 12pm on Sundays, October to April each year.

The basis for their request is that a suitable area to park and unload a trailer transported off-road all-terrain vehicle (ATV) for use on the beach is a critical aspect of running Smiths Beach SLC Nipper Program and surf patrols. Equipment trailers from the SLC Club Shed on Canal Rocks Road are towed by normal on-road vehicles to the beach access ramp, where they are unhitched from the vehicles and hitched to the ATV that then tows them onto the beach (3 to 5 trailers are used on any given Sunday during SLS operations). It has been getting increasingly difficult for the SLC to park and unload the ATV due to the high demand for public parking at Smiths Beach during peak holiday periods.

Officers support the request from Smiths Beach SLC and propose to regulate parking on the gravel road shoulder, immediately adjacent to the beach vehicle access ramp by designating it *"No Parking, 7am to 12pm Sun, Oct – April, Surf Life Saving Vehicles Excepted"* (as shown in Attachment E).

No Parking (Authorised Vehicles Excepted): Barnard Park West Western Car Park - Attachment F.

The City's Jetty Maintenance Team has requested that one parking bay in the Barnard Park West western car park be reserved for authorised City vehicles only from 6am to 6pm, Monday to Friday.

Although there is parking available within the jetty maintenance compound, immediately adjacent to the car park, there are times the compound needs to be cleared to allow larger vehicles to enter. Often during peak periods, there are no bays available in the car park, and this hinders jetty maintenance.

This report proposes to regulate parking in one bay, immediately adjacent to the maintenance compound, in the Barnard Park West western car park by designating it *"No Parking, 6am to 6pm Mon – Fri, Authorised Vehicles Excepted"* (as shown in Attachment F).

Special Purpose Parking: Old Tennis Club Car Park - Attachment G.

The Old Tennis Club car park is an all-day parking area bounded by Marine Terrace to the south, Queen Street to the west, Foreshore Parade to the north, and Jetty Way to the east. The car park was constructed in two parts and includes six disabled parking bays. One of the disabled parking bays has already been included in the CPS however, the remaining five have not.

Located on the northern side of Foreshore Parade are two loading zones, and one bus zone which are also not reflected in the CPS.

This report proposes to amend the CPS (as shown in Attachment G) by adding the as constructed five disabled parking bays, two loading zones, and one bus zone to the CPS.

No Parking Road or Verge: Smiths Beach Road (for P&L discussion) - Attachments H and I.

Currently both sides of Smiths Beach Road, from Canal Rocks Road to a point approximately level with the north-east corner of the Smiths Beach Resort, are designated no stopping areas in the CPS. This restriction applies only to the road. During peak holiday periods when the demand for parking is high, motorists often park on the verge in bush areas. Others park with half of their vehicle on the verge and the other half on the road. Some ignore the restrictions altogether and park wholly on the road.

A major issue during those peak periods is the 'follow the leader' affect which occurs when one or two people choose to park contrary to the existing no stopping signs, then others follow in the belief that if "they can do it, so can we". Unfortunately, when this happens it creates a hazardous situation due to traffic and parking congestion as shown at Attachment H.

Concerns regarding this congestion were raised through the City's Bush Fire Advisory Committee (BFAC), on behalf of some Smiths Beach residents by one of the Fire Control Officers of the local Volunteer Bush Fire Brigade. Concerns are that congestion of the type as shown in Attachment H may seriously hamper emergency access and egress for first responders to an incident, or a forced evacuation due to an emergency incident such as a bushfire.

Certainly one of the ways to manage this congestion is for the City to have zero tolerance to illegal parking along Smiths Beach Road. That would most likely only be a temporary fix, though, as the City's ability to rigorously enforce these restrictions on a regular basis is limited (Smiths Beach is only one area within the City where parking demand is high during peak holiday periods). It may also harm the reputation of the City as a tourist destination if we start to regularly issue parking infringements at this or any other location for which there is high demand for parking.

A solution to this problem may be to amend the CPS to change the restriction from "No Stopping" to "No Stopping, Road or Verge". This would act as a deterrent and provide greater clarity to those people who choose to straddle the road and verge when parking along Smiths Beach Road, apparently with the belief that because part of their vehicle is not on the road they are not committing an offence. Another major concern associated with people wholly or partially parking on the verge is the risk of a bushfire starting when a hot exhaust comes into contact with dry vegetation.

Should the CPS be amended as recommend the City's initial approach would be one of education, including written cautions for people who choose to ignore the restrictions, followed by a period of stronger enforcement whereby infringements would be issued to offenders as a means of changing behaviours.

This report proposes to amend the CPS (as shown in Attachment I) changing the parking designation of Smiths Beach Road from "*No Stopping*" to "*No Stopping, Road or Verge*".

P&L may choose to proceed with this amendment to the CPS as recommended above. Alternatively, due to high community interest in the proposed Smiths Beach Development, P&L may recommend consultation with the affected community prior to considering this proposal.

Statutory Environment

The officer recommendation supports the general function of a local government under the *Local Government Act 1995* to provide for the good government of persons in its district.

Pursuant to clause 2.1 of the *City of Busselton Parking Local Law 2020* (the Local Law):

“Determination of parking stalls, parking stations and parking areas

- (1) The Council may by resolution constitute, determine or vary:*
 - (a) parking stalls;*
 - (b) parking stations;*
 - (c) parking areas;*
 - (d) no parking areas;*
 - (e) no stopping areas;*
 - (f) permitted time and conditions of parking in parking stalls, parking stations and parking areas which may vary with the locality;*
 - (g) permitted classes of vehicles which may park in parking stalls, parking areas and parking stations;*
 - (h) permitted classes of persons parking stalls, parking stations and parking areas; and*
 - (i) the manner of parking in parking stalls, parking stations and parking areas.*
- (2) Where the Council makes a determination under subclause (1), the CEO must give local public notice of, and erect signs to give effect to, the determination.”*

Under the provisions of clause 1.8 of the Local Law:

“For the purpose of this local law, vehicles are divided into classes as follows:

- a. buses;*
- b. commercial vehicles;*
- c. motorcycles and bicycles;*
- d. taxis; and*
- e. all other vehicles.”*

In the case of the recommendation to regulate parking in the first two parking bays outside St Mary’s Anglican Church, a hearse would be included in the classification *“all other vehicles”*.

Relevant Plans and Policies

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

Financial Implications

There are no financial implications associated with the officer recommendation. Costs for the installation of parking signage and/or line marking will be funded using existing operating budgets.

Stakeholder Consultation

The proposal to regulate parking along Castle Rock Road was presented to, and endorsed by the Meelup Regional Park Working Group.

Other than the above, no external stakeholder consultation was required or undertaken in relation to this matter.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could approve with changes all or some of the proposed amendments to the CPS.

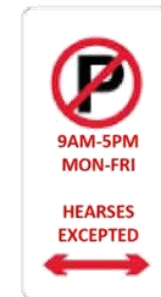
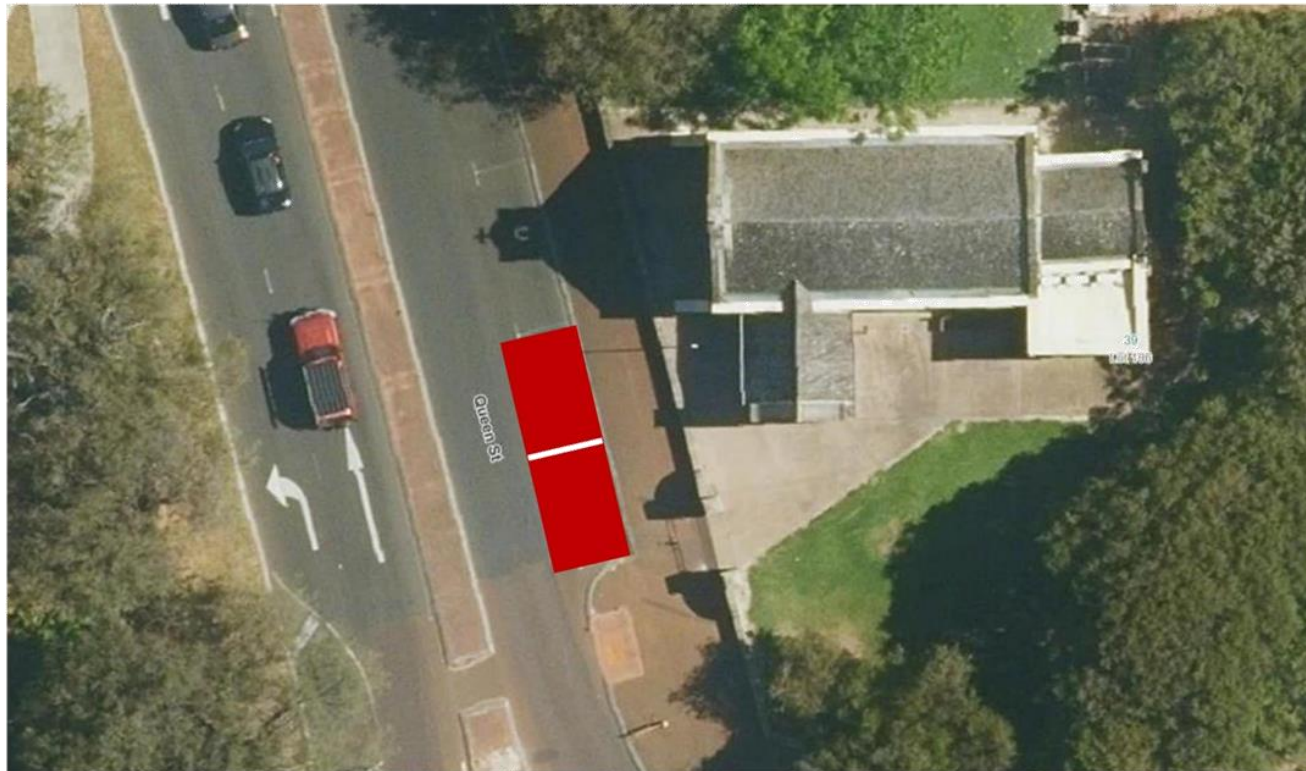
CONCLUSION

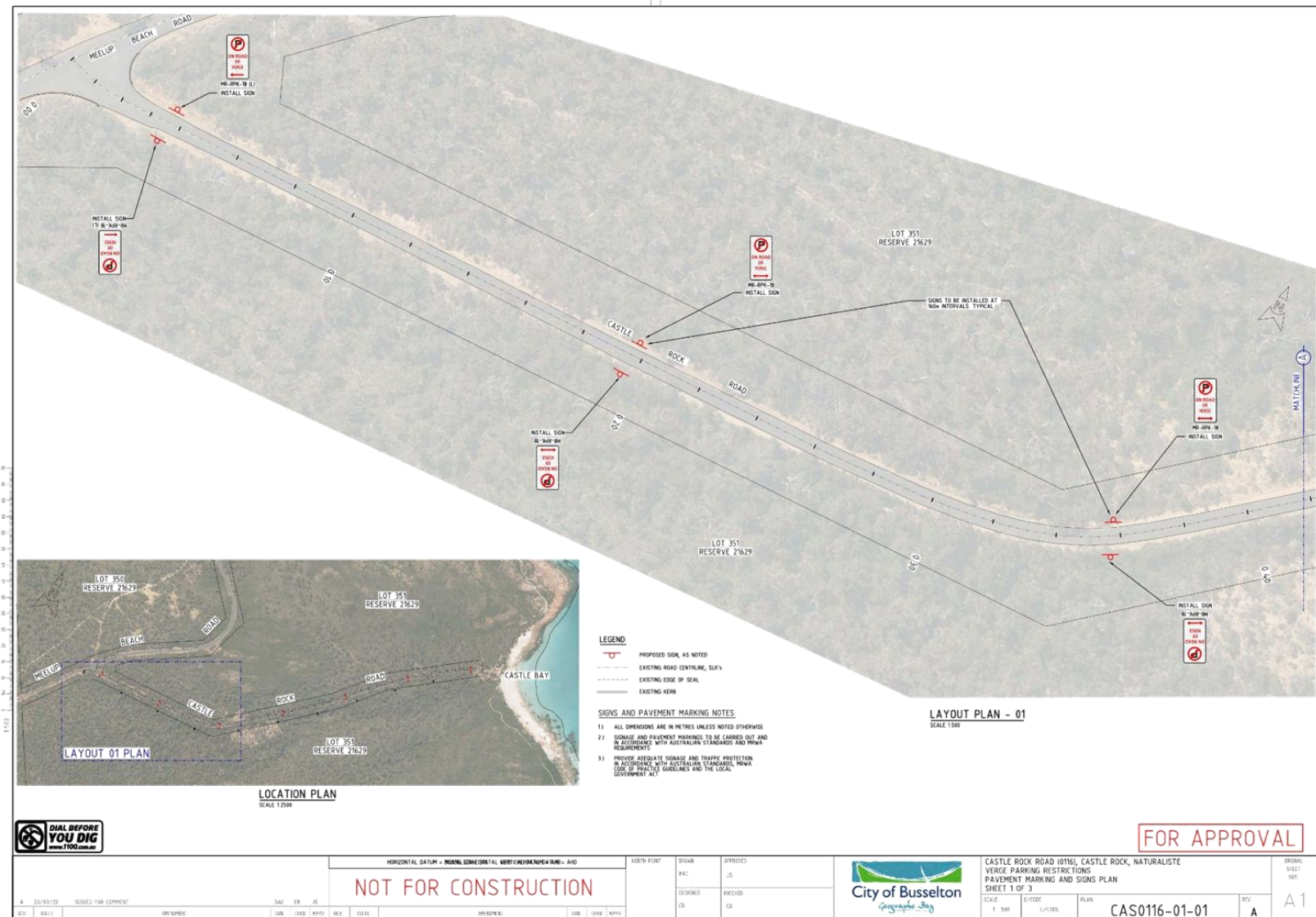
Officers are proposing that the Council approves the recommended amendments to the Consolidated Parking Scheme pursuant to Clause 2.1 of the City of Busselton Parking Local Law 2020.

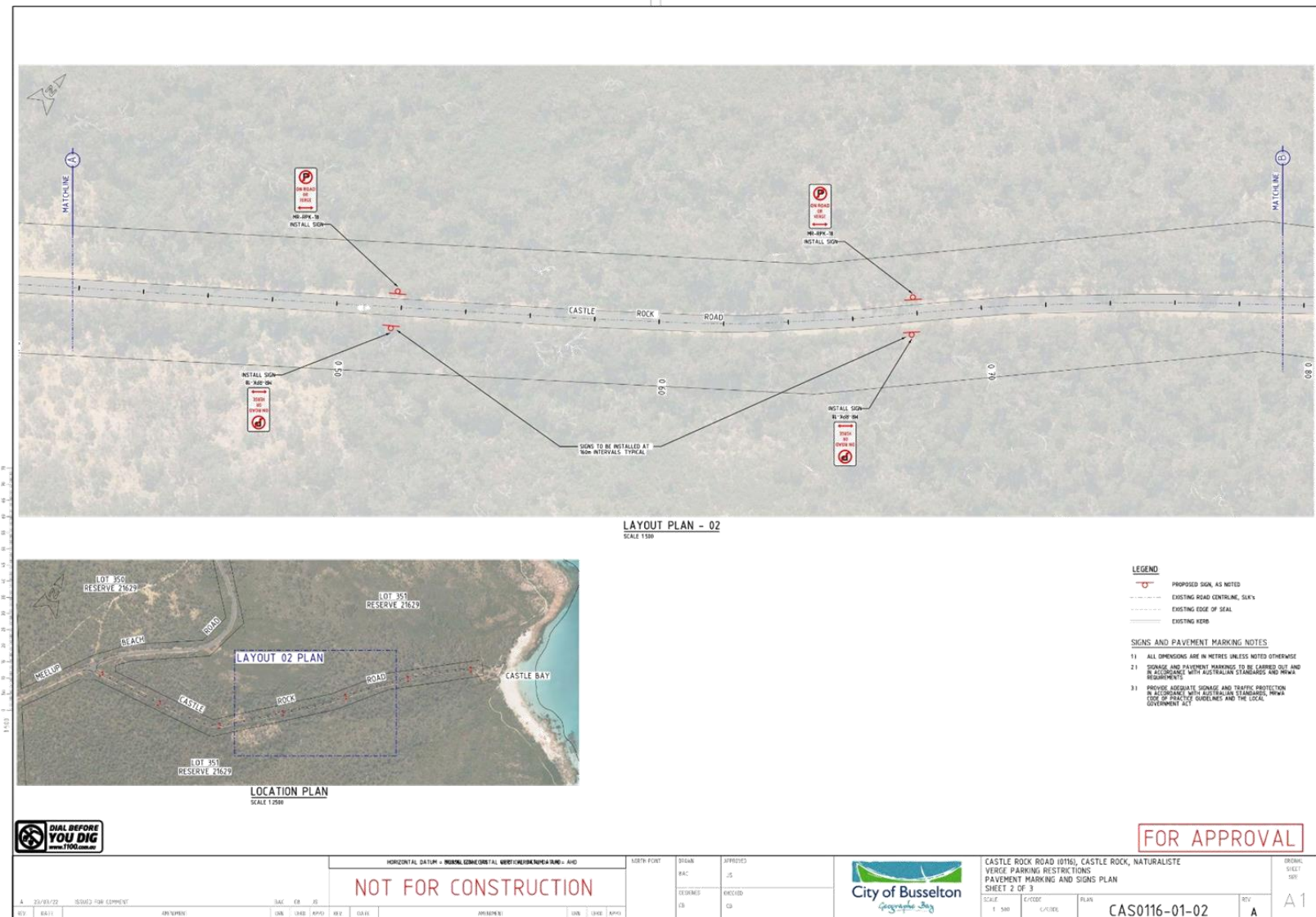
TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

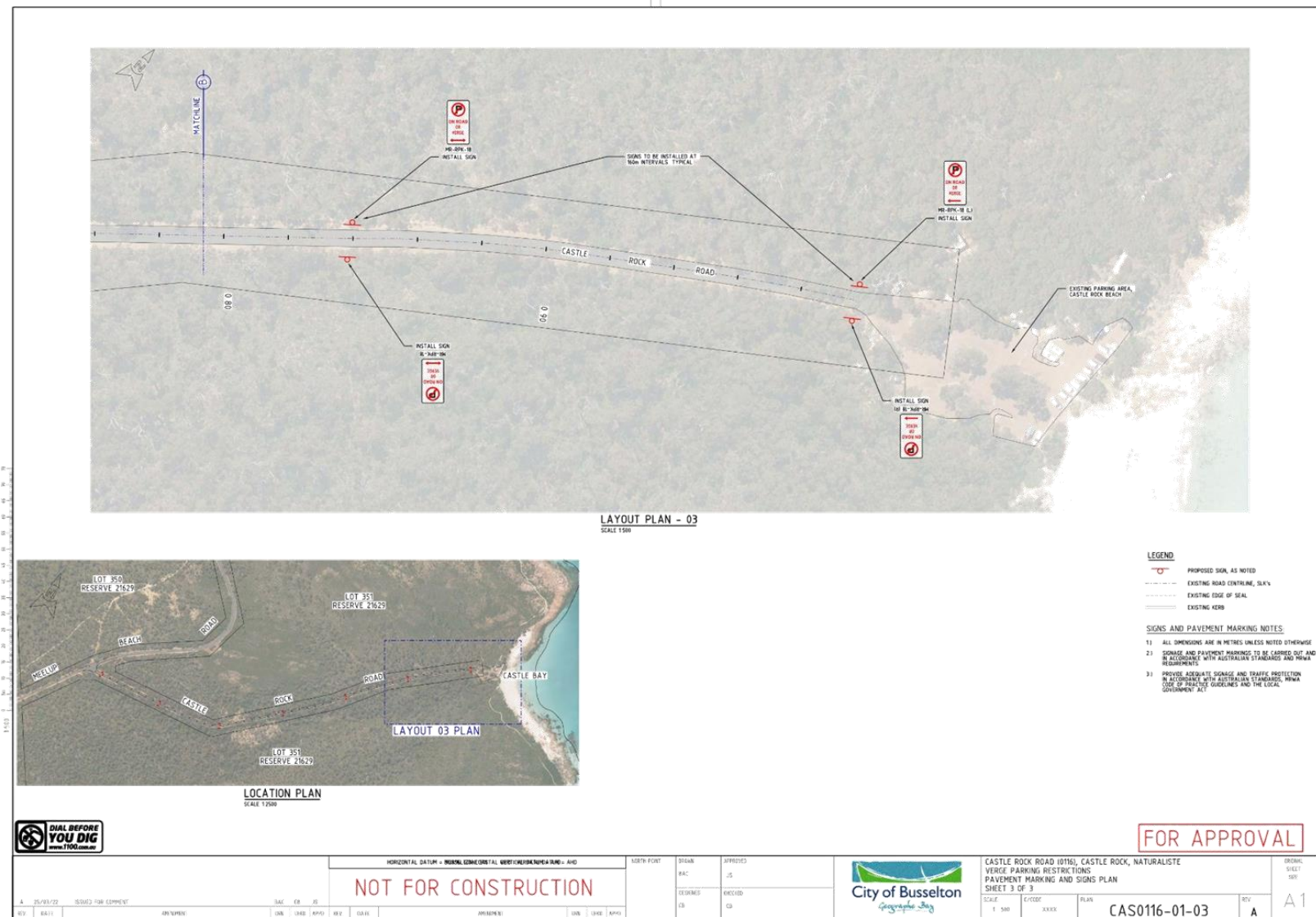
If approved by the Council, public notice of the amendments to the CPS will be given within four weeks. Signage designating the changes will be procured concurrently with the public notice and will be erected as soon as practicable after receipt.

No Parking Hearses Excepted: Queen Street (St Mary's Church)





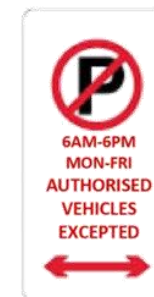
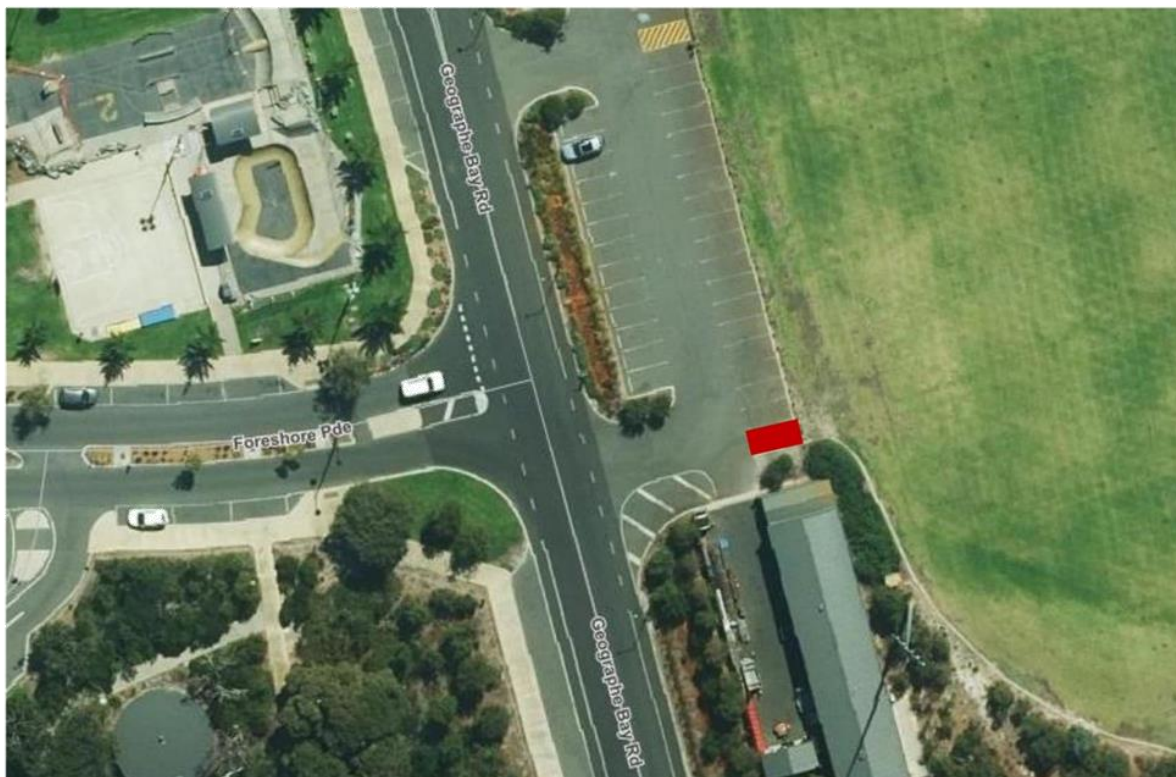




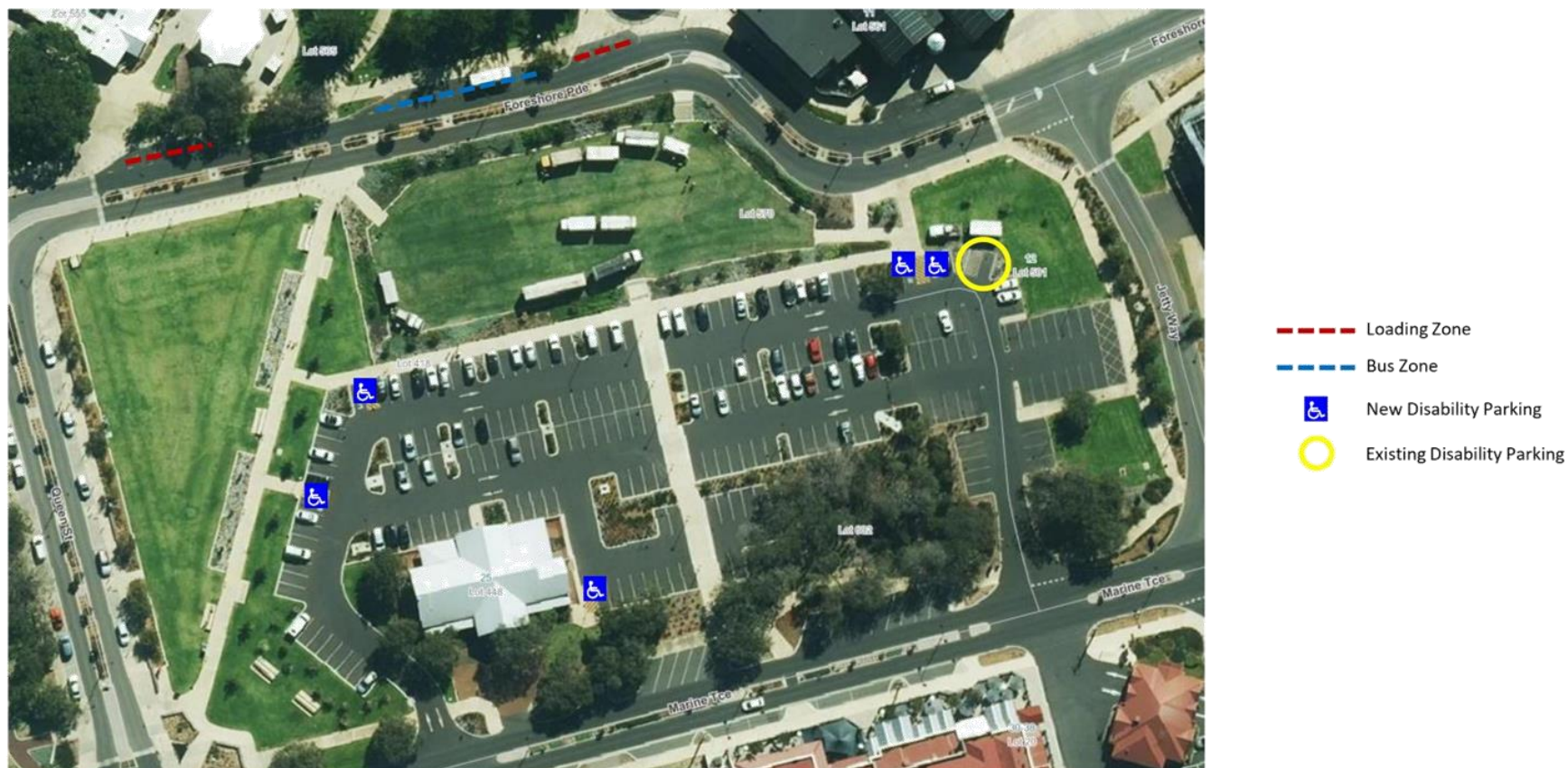
No Parking Surf Life Saving Vehicles Excepted: Smiths Beach



No Parking Authorised Vehicles Excepted: Barnard Park Western Car Park



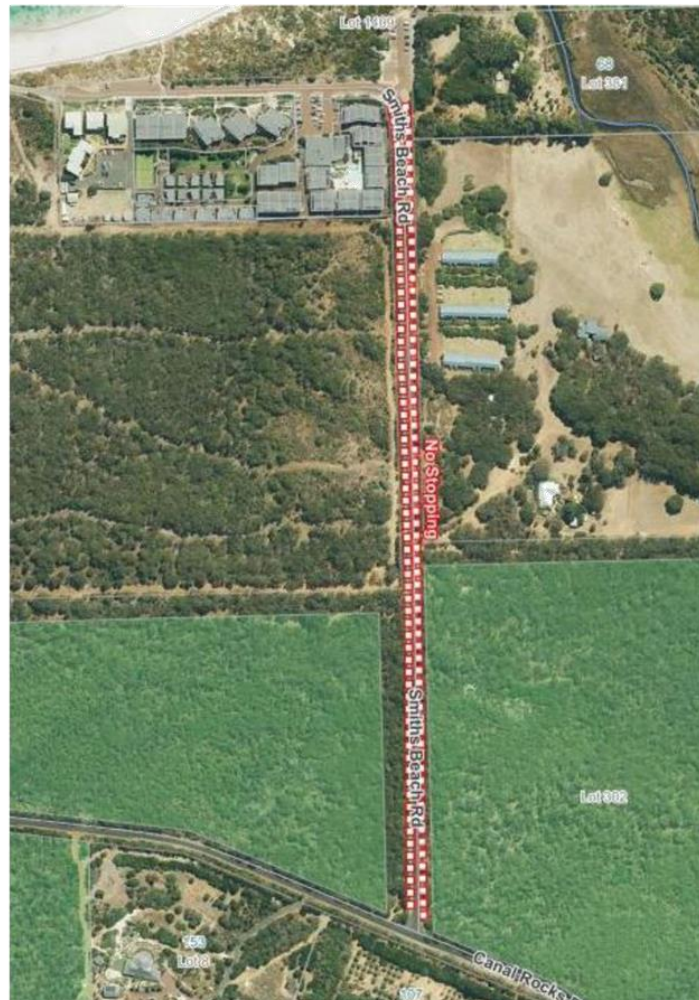
Special Purpose Parking: Busselton Foreshore (Old Tennis Club Car Park)



Parking Congestion – Smiths Beach Road



No Stopping Road or Verge: Smiths Beach Road



6.2 DOG EXERCISE AREA - YALLINGUP BEACH NORTH OF THE DAWSON DRIVE ACCESS PATH

STRATEGIC THEME	LIFESTYLE - A place that is relaxed, safe and friendly with services and facilities that support healthy lifestyles and wellbeing
STRATEGIC PRIORITY	2.3 Provide well planned sport and recreation facilities to support healthy and active lifestyles.
SUBJECT INDEX	Animal Management
BUSINESS UNIT	Environmental Services
REPORTING OFFICER	Ranger & Emergency Services Coordinator - Ian McDowell
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
VOTING REQUIREMENT	Absolute Majority
ATTACHMENTS	Attachment A Yallingup Beach - Dog Exercise Area North of Dawson Drive 

OFFICER RECOMMENDATION

That the Council:

1. After the giving of 28 days public notice, pursuant to section 31(3C) of the *Dog Act 1976*, resolves to adopt and implement, pursuant to section 31(3A) of the *Dog Act 1976*, a one kilometre length of Yallingup Beach north of the Dawson Drive access path, bounded by Leeuwin Naturaliste National Park in the east, Ngari capes marine park in the west as a dog exercise area; and
2. Resolves to adopt the following with regard to the specified area in recommendation 1:
 - (a) Beach areas, including the beach only (i.e. from the limit of the ephemeral vegetation or the toe of the seawall to the low water marks only, and not including vegetated foreshore areas, beach access paths or car parks) to be categorised as 'Dog Exercise Area' with that area being defined as follows:
 - (i) Pursuant to s.31(3A) of the *Dog Act 1976* and means that dogs are permitted, including off-leash, at all times except when approved organised events are taking place, wherein dogs are to be prohibited (except assistance dogs as defined by s.8 of the *Dog Act 1976*) unless specifically permitted by the City.

EXECUTIVE SUMMARY

The Department of Biodiversity, Conservation and Attractions (DBCA) Parks and Wildlife Services has approached the City to request Yallingup Beach north of the Dawson Drive access path (as identified in green within Attachment A), be designated as a dog exercise area under the provisions of the *Dog Act 1976* (the Act).

This section of beach has been informally used as a dog exercise area (DEA) for some years. This report seeks to formalise this practice, and in doing so, enable the City's Rangers to enforce relevant provisions of the Act if and when required.

BACKGROUND

The City's existing dog management controls were established through a series of Council decisions between September 2014 and October 2016. During the process of establishing these controls, there was extensive consultation with the community and community groups.

As a result of this, Yallingup Beach south of the Dawson Drive access path was declared a dog prohibited area (an area where dogs are prohibited at all times).

Consideration was given to declaring the proposed DEA north of Dawson Drive as a DEA, however as the land was understood to be within the marine park this did not eventuate.

In January this year, officers from DBCA approached the City requesting that we assume dog management responsibility for the northern section of the beach by designating it a DEA under the provisions of the Act.

The request was triggered from negative public feedback from beach users to DBCA, impacted by nuisance behaviour of dogs left unattended by owners in the water. As the City already has a dog prohibited area designated on the southern section of the beach, DBCA approached the City to request assistance in dog management controls for the proposed area in the north. Formalisation of this location as a DEA will mean all beach users are aware that dogs off leash are permitted on the northern section of the beach.

OFFICER COMMENT

This report proposes to establish a one kilometre length of Yallingup Beach, north of the Dawson Drive access path as a DEA (the green shaded area of Attachment A).

Yallingup Beach south of the Dawson Drive access path (the red shaded area of Attachment A) will remain a dog prohibited area as will the car park, known as the Rabbit's car park and including all beach access paths, within the Leeuwin Naturaliste National Park. This means the only access path to the dog beach will be from the Dawson Drive access path.

The responsibility for enforcing the dog prohibition within the National Park will remain with Parks and Wildlife Services.

If approved by the Council, this area would be the only dog exercise beach on the Western Cape. Although a portion of Smiths Beach is designated a seasonal DEA, the seasonal restrictions means that dogs are prohibited on the beach from 9am to 5pm, December to February inclusive.

Designating the section of the beach north of Dawson Drive as a dog exercise area is the preferred option of officers. This would allow dog owners to continue to exercise their dogs off-leash. Whilst the City's ability to patrol this or any other beach within the district would not be increased as a result of this designation, it would allow the City to engage with and educate dog owners and taking stronger enforcement action if necessary.

It should be noted that without some type of dog control designation under the provisions of the Act, the UCL portion of the beach would default to an area where dogs may be exercised but only on-leash. Therefore, as there has been no formal dog control designation on that part of the beach in the past, it has not been an area patrolled by the City.

From a practical enforcement perspective, any formal reduction in what has become custom and practice for many years (i.e. dogs being exercised off-leash) would be problematic and likely to create an unrealistic expectation that those controls would be rigorously enforced and/or complied with. If dogs were prohibited, or required to be on-leash it would create an influx of complaints to the City or DBCA whenever non-compliance is observed by those who oppose dogs on the beach.

Statutory Environment

The management and control of dogs in public areas is prescribed under the following sections of the *Dog Act 1976*:

Section 31(3A):

A local government may, by absolute majority as defined in the Local Government Act 1995 section 1.4, specify a public place, or a class of public place, that is under the care, control or management of the local government to be a dog exercise area.

Section 31(3C)(b):

At least 28 days before specifying a place to be a dog exercise area under subsection (3A) a local government must give local public notice as defined in the Local Government Act 1995 section 1.7 of its intention to so specify.

Assistance dogs, and persons entitled to be accompanied by assistance dogs, are defined in section 8 of the *Dog Act 1976*. Under the provisions of section 8(2) a person mentioned in subsection (3):

- a. *is entitled to be accompanied by an assistance dog, in any building or place open to or used by the public, for any purpose, or in any public transport: and*
- b. *is not guilty of an offence by reason only that he or she takes that dog into or permits that dog to enter any building or place open to or used by the public or on any public transport.*

Relevant Plans and Policies

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

Financial Implications

There are no financial implications associated with the officer recommendation.

Stakeholder Consultation

Extensive consultation has been undertaken by City officers to assess the feasibility of determination of the proposed area as a DEA. The process has been triggered from a request from DBCA, followed by on site meetings and extensive email correspondence between the City and DBCA officers.

Property owners in Yallingup townsite were invited in writing to comment on the proposal to specify Yallingup Beach north of Dawson Drive access path, a dog exercise area.

The Yallingup Residents Association (YRA), and Yallingup Land Conservation District Committee (LCDC) were also invited to comment and whilst both acknowledged this is an important community issue, both committees chose not to provide comment on behalf of their members. Instead they recommended their members respond on an individual and independent basis.

Of the 206 property owners who were invited to comment, 41 responded. Six of the respondents oppose the proposal, and 34 support it. It was unclear whether the remaining respondent opposed or supported the proposal and when requested to clarify, they did not respond further.

The views expressed by respondents were at either end of the spectrum with those in opposition “strongly opposed” to it, and many of those in support “strongly supporting” it.

It appeared that from some comments provided, there was a perception the area is already a designated dog exercise area. Some supporters welcomed the social aspects of formalising the designation, and noted the lack of dog exercise beaches on the Western Cape.

Reasons for opposing the proposal include:

1. *Some dogs are left unrestrained (unattended) on the beach while their owners are swimming or surfing in the water;*
2. *Unattended dogs are:*
 - a. *jumping up on children and the elderly walking on the beach;*
 - b. *running on and through the personal belongings of other beach users;*
 - c. *aggressive towards other beach users and dogs;*
 - d. *toileting on the beach with absent owners not cleaning up after their dog;*
3. *The proposed area includes a portion of the beach patrolled by Surf Life Saving WA (SLSWA) during the summer months;*
4. *Yallingup beach is an iconic beach, no other iconic beaches throughout Australia allow dogs; and*
5. *The beach is part of the Leeuwin National Park and as such dogs are prohibited under the provisions of the Conservation and Land Management Act 1984.*

Due to the amount of community interest in the management of dogs at Yallingup Beach, officers will advise all respondents to the consultation process of the Committee's recommendation and when it will be put to Council for consideration.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could:

1. Resolve to maintain the status-quo and not to make any formal dog management controls at Yallingup Beach north of the Dawson Drive access path.
2. Resolve to establish dog management controls at Yallingup Beach north of the Dawson Drive access, other than that recommended. That could be, pursuant to section 31(2B) of the *Dog Act 1976*, to specify the area:
 - a. an area where dogs are prohibited at all times; or
 - b. an area where dogs are prohibited at specified times (a seasonal dog exercise area).

CONCLUSION

Specifying Yallingup Beach north of the Dawson Drive access path as a dog exercise area will formalise what has been occurring informally in that area for many years. The City has consulted with property owners in Yallingup townsite, the Yallingup Residents' Association, and the Yallingup Land Conservation District Committee (LCDC). The results of the consultation indicate respondents are overwhelmingly in support of specifying this part of the beach a dog exercise area.



TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Should the Council endorse the officer recommendation to specify Yallingup Beach north of the Dawson Drive access path, officers will arrange for the public notice requirements of the *Dog Act 1976* to be actioned within two weeks.

The changes will then come into force 28 days after the giving of the public notice, at which time arrangements will be made to erect the necessary signage at that location to indicate it is a dog exercise area.



6.3 COUNCIL POLICY REVIEW: VERGE AND PUBLIC OPEN SPACE IMPROVEMENT

STRATEGIC THEME	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
STRATEGIC PRIORITY	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Governance Services
REPORTING OFFICER	Governance Coordinator - Emma Heys
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Council policy: 185/3 Verge and Public Open Space Improvement - Subdivision (Current)  Attachment B Council policy: Verge and Public Open Space Improvement - Subdivisions (Proposed) 

OFFICER RECOMMENDATION

That Council adopt the amended Council policy: Verge and Public Open Space Improvement – Subdivisions (Attachment B) to replace the current policy (Attachment A).

EXECUTIVE SUMMARY

This report presents an amended Council policy: Verge and Public Open Space Improvement – Subdivisions (the Policy) (Attachment B), with the policy having been reviewed as part of the City's ongoing review of its Council policies. Officers recommend it replaces the current Council policy (Attachment A.)

BACKGROUND

Council policy: Verge and Public Open Space Improvement – Subdivisions was last reviewed 13 December 2017 (Attachment B). The intention of the policy is to establish the City's minimum landscaping standards and to provide guidance around how the City will deal with proposals from a developer to implement within a subdivision a higher standard of landscaping and infrastructure.

Officers have undertaken a review of the Policy as part of the City's ongoing review of Council policies and are proposing a number of amendments to improve the application of the policy.

OFFICER COMMENT

The objective of the Policy is to outline how the City will deal with proposals from developers of subdivisions to construct or apply a higher standard of landscaping and infrastructure to new subdivisions that are to be vest to the City for management.

The City has set out a minimum standard of subdivision landscaping and infrastructure within its Engineering Technical Standards and Specifications (Technical Specifications) and whilst the preference is that this standard is not exceed, it is acknowledged that historically in selected subdivisions a higher standard has been constructed and provided for through application of a Specified Area Rate (SAR), and that there may be instances where the Council would consider this in the future.

The information required for developing landscaped areas is contained within the Technical Specifications, Section 9(a) and 9(g) – Landscape;

- Section 9a - Landscaping General
- Section 9b - Landscape Irrigation
- Section 9c - Landscape Road Reserve or Nature Verge
- Section 9d - A Guide to Landscape POS Rev A
- Section 9e - Combined Species Rev A
- Section 9f - Environmental Weeds Rev A
- Section 9g - A Guide to Landscape Entry Statements

These standards and specifications need to be read in conjunction with the City's relevant statutory requirements, Council Policies, relevant State and Federal Government policy and the WA Planning Commission (WAPC) conditions including operational policy Liveable Neighbourhoods (latest version).

The proposed amendments to the Policy set out the City's position with respect to proposals from a developer for a higher standard of landscaping and infrastructure in subdivisions that are intended to be vested in the City for management. That is, that a SAR would be applied subject to the approval of Council, and the submission of plans. The option of a Developer Funded Landscape Annuity Proposal has been removed, as this is not a current practice.

The duplications with the Technical Specifications has been removed from the Policy and replaced with a simple reference to the minimum standards of landscaping and infrastructure required by the City.

How a SAR is to be calculated has been removed from the Policy as this would be determined at the time as part of any application to Council for a SAR. This detail is to be included in the Technical Specifications when a review of these documents is undertaken.

Statutory Environment

The Officer Recommendation supports the general function of a local government under the *Local Government Act 1995* to provide for the good government of persons in its district.

Relevant Plans and Policies

The City's Engineering Technical Standards and Specifications are a relevant document associated with the officer recommendation.

Financial Implications

There are no financial implications associated with the Officer Recommendation.

Stakeholder Consultation

No external stakeholder consultation was required or undertaken in relation to this matter.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could chose not to adopt the amended policy and retain the policy in its current form. For the reasons outlined in the officer comment above, this option is not recommended. The Council could also choose to make further amendments to the Policy.

CONCLUSION

An amended Council policy: Verge and Public Open Space Improvement – Subdivisions (the Policy) (Attachment B), is presented to Council for endorsement, with the policy having been reviewed as part of the City's ongoing review of its Council policies. Officers recommend it replaces the current Council policy (Attachment A.)

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented within one week of Council's endorsement.

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185/3	Verge and Public Open Space Improvement - Subdivision	V4 Current
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Definition: 'Verge' means road verges, roundabouts and medians within the road reserve

Policy: Verge Improvement and Public Open Space

It is the Council Policy to seek a verge and public open space improvement to a minimum standard that makes areas functional, aesthetic and usable, as part of the urban subdivision process, prior to subdivision clearance. Improvements should comply with minimum landscaping standards in Western Australia Planning Commission's (WAPC's) current "Liveable Neighbourhoods Edition" Operational Policy and shall also be financially, socially and environmentally sustainable.

The intention of this policy is to establish the City of Busselton's minimum landscaping standard and to provide guidance to the Council when considering any proposal from a developer to implement a higher standard of landscaping, including associated maintenance agreements and arrangements.

Scope of Policy

This policy applies to passive recreation parks, reserves, and verges. Active sports fields that are designed and developed for organized sport are excluded from the policy provisions but the surrounds to such areas shall be included and assessed as passive recreation areas.

Applicable areas shall include all reserves that are to be landscaped or rehabilitated as part of the subdivision, that are intended to be vested in the City as reserves for recreation, landscape protection, foreshore management, drainage or other purposes, including verges.

Landscape Categories

Three categories of Verge and Public Open Space (POS) are adopted for reference:

Category 1

This category relates to reserves that have a high profile which require a high level of maintenance for whole of community benefit.

Category 2

These are passive activity areas with a medium level of maintenance required and include elements or all of the following; trees, shrubs, lawned areas, mulched gardens, infrastructure and reticulation.

Category 3

These areas are not reticulated and require minimum maintenance.

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The use of native plants and waterwise designs is encouraged in all categories.

It should be noted that a single reserve or area might contain more than one category of landscape treatment.

Landscaping to Be Provided By Developers

For all options A, B & C that follow, irrigation demand (if any), whether from bore or scheme water, shall be minimal and shall be from a secure, adequate and sustainable supply source.

Option A

This is the preferred option for maintenance of reserves following developer handover as reflected in the City of Busselton's Engineering Technical Standards and Specifications – Section 9 – Subdivisions and Developments – Landscaping, Revegetation and Stabilisation which sets out that the City will not accept maintenance liability for intensively developed open space.

The City's preference is that POS areas and verges areas created by subdivision should consist predominantly of Category 3 landscaping, with consideration of limited Category 2 treatments (if any) in key areas. The total annual maintenance cost of all landscaping in the subdivision should not exceed the "Option A standard percentage" of "nominal general rate" revenue from the fully developed subdivision that is nominated by the City to reflect the normal sustainable maintenance spending by the City each year on Public Open Space Maintenance. The Option A standard percentage was set at 15% back in the 2007/08 Financial Year but may be revised by the City each year based on adopted City budgets. The term "Nominal general rate revenue" as applicable to this policy is defined in the guidelines that follow.

Under Option A, basic public open space low maintenance facilities such as playground equipment in addition to the improvement to the landform, appearance and/or vegetation is encouraged. High maintenance landscaping such as artificial water bodies, extensive reticulated lawn, garden bed, exotic vegetation or barbecues is discouraged. This is to avoid the expectation of residents that the Council will accept the cost of high maintenance facilities.

Option A requires:

A landscape maintenance period of 2 years.

A landscape maintenance performance bond equal to two years of estimated maintenance cost (with no margin or loading).

Refer to the Option A example calculation elsewhere in this Policy.

A Landscape Maintenance Agreement is may be required for Option A at the discretion of the City. –

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Alternatives for a Higher Standard of Landscaping

If a developer wishes for a higher standard than Option A, where annual maintenance costs exceed the Option A standard percentage of nominal general rates, the proposal shall be referred for the Council's approval, prior to the approval for construction of landscape treatments or clearance of subdivision. The proposal shall be an Option B or Option C Proposal as described below, or an alternative "high standard" proposal that the developer might seek to implement based on similar principles.

Proposals shall be considered by the City on individual merit. Arrangements accepted for other subdivisions shall not be construed to establish a precedent. The Council may withhold approval at its discretion, in which case the developer may fall back to Basic Landscape Option A, or may canvass the Council in respect of other High Standard Options not previously canvassed.

Note that the ability to pay for high quality Option B or C landscape treatments in the foreseeable future should not be the sole consideration as to its acceptance and will not over-ride other sustainability considerations. Those considerations will include compliance with Water Sensitive Urban Design (WSUD) guidelines, retention of biodiversity values, use of endemic landscape species and general resource consumption issues.

Option B – Specified Area Rate (SAR) Proposal

Option B (SAR Proposals) require:

Council approval;

A Landscape Maintenance Agreement;

Identification of the areas to be landscaped, annual maintenance budgets for each area, the total annual landscape maintenance budget for the whole subdivision as well as the whole of life cost;

Details of the proposed SAR. The SAR should:

fund the extra-over landscape maintenance cost that exceeds the Option A standard percentage of the nominal general rate revenue;

include an additional minor allowance to cover City expense costs for administering the SAR (amount to be advised by Shire);

aim to be no more than a 20% addition to the general rate levy per property (i.e. a SAR limit of about \$329 per lot based on average rate levy of \$1615 in 2017/18 dollars) to support longer term acceptability to ratepayers;

identify the proposed SAR commencement date, to be within the developer's landscape maintenance period and as soon as possible following clearance of initial stages of the subdivision;

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include a cashflow forecast for the developers maintenance period and beyond, that as a minimum shall account for the SAR accumulations in reserve during the maintenance period and the financial (rating) implications of lots remaining undeveloped (vacant) after the maintenance period. The former would be envisaged to offset the latter.

identify the SAR Area boundary suitably located to avoid equity objections from ratepayers.

A landscape maintenance period of minimum 5 years.

A landscape maintenance performance bond equal to 5 years multiplied by the Option A standard percentage of nominal general rate revenue from the subdivision (with no margin or loading).

Section 70A Notifications on Title by the developer at clearance, to inform purchasers. Any proposal to establish a SAR must gain the Council's endorsement well ahead of the clearance of the first stage of subdivision as failure to establish section 70A Notices on title would normally make Option B SAR proposals untenable.

Provisions to extend the developer's maintenance period (delay handover) until financial and environmental sustainability criteria and other Landscape Maintenance Obligations in the Landscape Maintenance Agreement have been met to the reasonable satisfaction of the City.

Refer to the Option B example calculation elsewhere in this Policy. Note - the 5 year maintenance period for Option B is nominated to:
ensure adequate time for the developer to achieve and prove sustainability objectives prior to handover;

allow sufficient time to implement the SAR and accumulate SAR revenues in reserve as a buffer against ongoing vacant lots or later cost over-runs; and

allows for the ramping up SAR collections from low starting levels in the initial years.

Option C – Developer Funded Landscape Annuity Proposal

Option C proposals should be based on a 40 Year Developer Funded Landscape Maintenance Annuity. Option C proposals require;

The Council's approval;

Identification of the areas to be landscaped, annual maintenance budgets for each area and the total annual landscape maintenance budget for the whole subdivision;

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Funding the extra-over landscape maintenance cost that exceeds the Option A standard percentage of the nominal general rate revenue via a "40-year Developer Funded Landscape Annuity;

A developer maintenance period of minimum 2 years.

A landscape maintenance performance bond equal to 2 years multiplied by the Option A standard percentage of nominal general rate revenue from the subdivision (with no margin or loading).

Refer to the Option C example calculation elsewhere in this Policy.

Option C proposals do not require a formal Landscape Maintenance Agreement from a City perspective. However, it is expected that developers may seek such an agreement to oblige appropriate expenditure of the annuity by the City.

Guidelines: Verge and Public Open Space Improvement

Landscaping Generally

The extent of works required and approved will ultimately be determined by the Chief Executive Officer.

More than one WAPC subdivision approval area may be combined in a single proposal under Option B or C.

The works shall be carried out under the direction and the supervision of the Chief Executive Officer.

Works shall be carried out as soon as practicable before clearance of subdivision following completion of civil engineering works on the subdivision, except that outstanding works may be bonded under the provisions of the Council's early clearance subdivision policy as applicable.

Verge Landscaping

Road verge landscape plantings are normally intended to be established and maintained by the adjoining landowner. Verge plantings provided by the developer should therefore be limited under ALL landscape Options to no greater than the following:

Roundabouts and medians of dual carriageways;

drainage basins and swales provided in roundabouts, medians or verges;

verges immediately abutting POS and reserves (landscaped to the same detail as the adjoining POS or reserve);

road verges that have no directly adjoining lot frontage. These are typically higher order roads classified as arterial roads, district

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distributors or local distributors or the Western Australia Planning Commission's (WAPC's) current "Liveable Neighbourhoods Edition" Operational Policy road equivalents that are designed to prevent or limit direct property access; such verges can include the separator or buffer strips between major roads and adjacent parallel local or service roads.

generally for local roads, only a single street tree per lot frontage (2 for corner lots) should be provided by the developer in verges that adjoin residential or other development lots.

verge landscaping (in excess of single street trees) may be supported for the front verge of rear accessed (laneway) lots where the verge is divorced from the lot via a front retaining wall and there is no front driveway.

Works scope may extend beyond the immediate frontage of the subdivision. In this way verges of the collector and distributor roads associated with the subdivision, can be improved.

Estimates of Landscape Maintenance Costs

Estimates of annual landscape maintenance costs shall be provided on request, to the satisfaction of the City, if the City believes that the annual landscape maintenance cost might exceed the Option A standard percentage of the nominal general rate revenue, for the subdivision and the landscaping proposed.

Landscape maintenance costs estimates shall account for all landscape areas developed as part of the subdivision whether internal or external to the subdivision boundary. Estimates and costings may be rejected, accepted or otherwise adjusted at the sole discretion of the City. Estimates shall account for normal annualised operating costs (excluding GST) that include borewater supply costs and license fees, utility (power and water) rates and consumption charges. End of life replacement costs for hard landscaping shall be excluded.

Maintenance cost estimates shall reflect the anticipated annual costs occurring after expiry of the developer's maintenance period and should therefore make due allowance for items downgraded (by agreement) prior to handover and should exclude initial maintenance costs that are of an establishment nature.

Definition of "Nominal General Rate Revenue"

Nominal general rate revenue is defined as the estimate (to the satisfaction of the City) of the general rates that would theoretically arise from all lots within the subject subdivision boundary, if the lots were fully developed with housing etc. and rated as such at current year values. Actual rate revenues will differ in early years due to vacant lots.

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Downgrade Items/ Entry Statements

Landscape elements should generally not be planned to be downgraded prior to handover, as a means of achieving financial sustainability due to problems with managing public expectations.

An exception is "Entry Statements" that are developed to category 1 or 2 standard. An Entry Statement is any construction or landscaping arrangement constructed with the express aim of promoting and enhancing the entry and presentation of a subdivision or development. These SHOULD be planned to be downgraded prior to handover. A specific stand-alone (short form) Entry Statement Maintenance agreement is required for Entry Statements proposed as part of Landscape Option A or C subdivisions, consistent with – Section 9 – Subdivisions and Developments – Landscaping, Revegetation and Stabilisation of the City of Busselton's Engineering Technical Standards and Specification. . However, at the City's discretion, Entry Statements may form part of Landscape Option A or C subdivisions' Landscape Maintenance Agreement. In Landscape Option B subdivisions equivalent provisions that are specific to the Entry Statement/s (where one or more is proposed) should form part of the larger Landscape Maintenance Agreement that is required in respect of Option B.

Landscape Maintenance Performance bonds

These may be cash bonds or bank guarantees of acceptable format, lodged prior to clearance and held until expiry of the developer's maintenance period for the purpose of securing the performance of the developer's landscape maintenance obligations;

Landscape Maintenance Bonds shall be separate to the twelve months maintenance period bonds otherwise provided for subdivision civil works due to the different timeframe for release of bonds; and

Landscape Maintenance bonds should be separate and additional to outstanding works bonds that may be lodged in respect of incomplete landscape works at time of clearance under other City of Busselton policies.

Landscape Maintenance Period

The date of expiry of the (Developer's) Landscape Maintenance Period in respect of Options A, B & C (notwithstanding other provisions that extend the date for non-compliance) shall be based on applying the Landscape Maintenance Period from the latest of:

the clearance date of the subdivision, and

the "Date of Practical Completion" of the landscape elements.

In any event, the developer's landscape maintenance period extends from the clearance date until the expiry date. This is significant where early clearance is supported and there is substantial bonding of incomplete landscape works.

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"Practical Completion" of landscape elements shall be based on 95% completion of all Landscape Work by value and no less than 95% completion of all "soft landscape" plantings (grass, shrubs & trees), to the satisfaction of the City.

For multi-staged subdivisions, the maintenance periods and corresponding expiry dates apply independently to each stage. Alternatively a single landscape maintenance period expiry date may be determined for all stages (for simplicity) relative to the final stage, in which case shortening of the landscape maintenance period relative to the final stage may be supported at the discretion of the Chief Executive Officer, to achieve the normally specified maintenance period as an average across all stages. For example, a subdivision progressively staged and cleared over a two year period that otherwise warrants a 5 year maintenance period could have a maintenance period expiry date set for all stages that is 4 years after the practical completion of the final stage.

Notifications on Title

All lots created in subdivisions with other than Option A landscaping require section 70A Notices (Transfer of Land Act 1893) to warn purchasers of potential downgrading of high maintenance standards provided at subdivision (despite downgrading only being normally intended for entry statements). For Option B proposals the Section 70A Notice shall also warn of the application of Landscape Specified Areas Rates. Typical text follows:

This lot is part of the "<insert>" subdivision which upon original development was provided with a higher standard of landscaping in its parks and road reserves than is normally supported by the Shire of Busselton. Considering this higher standard, there is a potential for the Shire of Busselton to impose a Specified Area Rate in relation to landscape maintenance and there is also potential for the Shire to amend the standard of the landscaping and the amount of any such Specified Area Rate in future."

Example Calculations

Option A – Basic Landscaping Calculation:

Example - A 500 lot subdivision anticipates average general rates payable per rated (residential/industrial/commercial) property of \$1,615 (in 2017/18 dollars) per lot when fully developed with housing. The Landscape design is predominantly category 3 with an estimated annual maintenance cost of \$102,625 (at 2017/18 dollars excluding GST);

Maintenance cost = \$102,625/500 lots = \$205 per lot per year;

Maximum acceptable Option A cost is 15% x \$1,615 per lot = \$242 per lot, (x 500 lots = \$121,000 overall) per year, so the Option A cost criteria is satisfied;

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A landscape maintenance performance bond of 2 years x \$102,625 = \$205,250 is required prior to clearance.

Option B – SAR Proposal:

Example - A 500 lot subdivision anticipates average general rates payable per rated (residential/industrial/commercial) property of \$1,615 (in 2017/18 dollars) per lot when fully developed with housing. The higher quality Landscape design has an estimated annual maintenance cost of \$249,232 (at 2017/18 dollars excl GST).

Maintenance cost = \$249,232/500 lots = \$498 per lot per year. This amount exceeds the Option A limit by \$498 - \$242 = \$256 per lot (x 500 lots = \$128,000 in 2017/18 dollars).

The Specified Area Rating Proposal must therefore generate the extra-over amount of \$128,000 per year (in 2017/18) dollars at full development of all 500 lots. Actual SAR revenues will be less in early years prior to full development, but will “ramp up” and accumulate in reserve during this period while the developer meets the full landscape maintenance cost;;

The \$498 average per lot cost is ultimately to be funded \$242 from general rate revenue and \$256 from SAR revenue. All figures escalate annually for inflation. However, general and Specified Area Rates are expected to escalate simply via escalation of underlying gross rental valuations;

A landscape maintenance performance bond of 5 years x 500 lots x \$242 per lot = \$605,000 is to be lodged prior to clearance.

The landscape maintenance period will extend until the developer demonstrates that annual maintenance costs lie within the \$249,232 annual target (indexed to the date of handover).

Option C – Developer Landscape Annuity Example:

Example - A 500 lot subdivision anticipates average general rates payable per rated (residential/industrial/commercial) property of \$1,615 (in 2017/18 dollars) per lot when fully developed with housing. The higher quality Landscape design has an estimated annual maintenance cost of \$249,232 (at 2017/18 dollars Excl GST).

A landscape maintenance performance bond of 2 years x \$249,232 = \$498,464 is required prior to clearance.

The annual Maintenance cost = \$249,232/500 lots = \$498 per lot per year. This exceeds the Option A limit by \$498 - \$242 = \$256 per lot (x 500 lots = \$128,000 per year in 2017/18 dollars). The developer must pay an annuity amount (a fee) that is the Present Value of the \$128,000 per year extra-over cost, with appropriate inflation and discount allowances for a 40 year period after clearance, less the component of this amount that is

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applicable to the 2 year maintenance period and otherwise covered by the maintenance bond. The fee is calculated in this manner as follows:

$$\text{Present Value} = \left[\frac{1 - (1 + r)^{-n}}{r} \right] \times \$ Y$$

In this example,

n=40 annual payments of Y,

* Y= \$128,000 (in FY2017/18 dollars),

r = the (real) discount rate which, accounting for inflation of maintenance cost 'Y' at the assumed annual inflation rate "i" is reasonably approximated as the difference between the nominal discount rate "rn" and "i". The nominal discount rate (rn) shall be the interest rate available for City investments. In this example the following rates are assumed,

nominal discount rate, rn = 8%

inflation rate i = 6%

r = real discount rate (approx) = rn – i = 2%

The formulagives present value = \$2,393,604, for which the corresponding fee to be paid prior to clearance is:

\$3,501,500 - \$498,464 = \$3,003,036

History

Council Resolution	Date	Information
C1712/323	13 December 2017	Reviewed
C0707/162	25 July 2007	Completely revised version of former policy 185/3 Version 3
C0111/566	28 November 2001	Substantially revised version of former policy 185/3 Version 2
(W94/0194) C94/0368	28 September 1994	Date of implementation Version 1



Council Policy

Council Policy Name: Verge and Public Open Space Improvements – Subdivisions
Responsible Directorate: Finance and Corporate Services **Version:** PROPOSED

1. PURPOSE

- 1.1. The purpose of this Policy is to outline the City's approach to proposals from developers for higher value landscaping and infrastructure in subdivisions which is intended to be vested to the City for management.

2. SCOPE

- 2.1. The Policy applies to all subdivisions intended to be vested to the City for management.

3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council policy titled "Verge and Public Open Space Improvements"

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Theme 2 - Lifestyle and Key Theme 4 – Leadership of the City's Strategic Community Plan 2021 and specifically the following Strategic Priorities:
- a. 2.12: Provide well maintained community assets through robust asset management practices.
 - b. 4.5: Responsibly manage ratepayer funds to provide for community needs now and in to the future; and

5. POLICY STATEMENT

- 5.1. The City seeks to manage and maintain its assets in a financially and environmentally responsible manner.
- 5.2. The City of Busselton Engineering Technical Standards and Specifications (Technical Standards), outlines the minimum standards / levels of landscaping and infrastructure required by the City in subdivision developments.
- 5.3. The City will not accept liability for landscaping and infrastructure which exceeds these standards without the application of a specified area rate (SAR).
- 5.4. A SAR may be imposed under Section 6.37 of the *Local Government Act 1995* for the purpose of providing a higher standard of maintenance for development which exceeds the minimum requirements.
- 5.5. Council approval will be required for the application of a SAR, with proposals to be considered by the City on individual merit, taking into account not only financial implications but also sustainability considerations of the proposed improvements.
- 5.6. A proposal for a SAR must be accompanied by detailed landscaping and infrastructure plans, and a total annual operating budget and whole of life cost for the specified area.

5.7. The City will require developers to enter into landscape maintenance agreements.

6. RELATED DOCUMENTATION / LEGISLATION



6.1. *Local Government Act 1995*

6.2. City of Busselton Engineering Technical Standards and Specifications

7. REVIEW DETAILS

Review Frequency		3 yearly <i>[adjust if earlier review is appropriate]</i>		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	13 December 2017	Resolution #	C1712/323

6.4 COUNCIL POLICY REVIEW: MANAGEMENT OF COMPLAINTS OF ALLEGED BREACHES OF BEHAVIOUR

STRATEGIC THEME	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
STRATEGIC PRIORITY	4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
SUBJECT INDEX	Council Policies
BUSINESS UNIT	Corporate Services
REPORTING OFFICER	Manager Governance and Corporate Services - Sarah Pierson Governance Coordinator - Emma Heys
AUTHORISING OFFICER	Director Finance and Corporate Services - Tony Nottle
NATURE OF DECISION	Executive: Substantial direction setting, including adopting budgets, strategies, plans and policies (excluding local planning policies); funding, donations and sponsorships; reviewing committee recommendations
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Council Policy: Management of Complaints of Alleged Breaches of Behaviour (Current)  Attachment B Amended Council Policy: Management of Complaints of Alleged Breaches of Behaviour (Clean)  Attachment C Amended Council Policy: Management of Complaints of Alleged Breaches of Behaviour (Tracked Changes) 

OFFICER RECOMMENDATION

That the Council adopts the amended Council policy: Management of Complaints of Alleged Breaches of Behaviour (the Policy) (Attachment B) to replace the current policy (Attachment A).

EXECUTIVE SUMMARY

This report presents an amended Council policy: Management of Alleged Breaches of Behaviour (the Policy) (Attachment B) for Council endorsement, to replace the current policy (Attachment A).

BACKGROUND

In accordance with section 5.103 of the *Local Government Act 1995* (the Act) and the *Local Government (Model Code of Conduct) Regulations 2021* (the Regulations), Council adopted a Code of Conduct for Council Members, Committee Members and Candidates (the Code). The Code includes general principles and behaviours for Council Members, Committee Members and Candidates. Alleged breaches of Part 3 of the Code - 'Behaviours' are subject to a complaints process, to be determined and managed by the local government.

Council initially adopted Council policy: Management of Complaints of Alleged Breaches of Behaviour (the Policy) at its Ordinary Meeting of Council 9 June 2021 (C2106/113).

At its meeting of 27 October 2021, the Policy and Legislation Committee recommended the formation of a Behaviour Complaints Committee (the Committee) consisting of 5 members and 4 deputy members, with the Committee to make findings on complaints under delegation from the Council. The Committee recommended revisions to the Policy including an additional clause to provide the CEO with the discretion to refer the Complaints Officers' report, in extraordinary circumstances, to a Council Meeting for Council to make a finding in relation to the complaint.

At the Ordinary Meeting of Council, 10 November 2021, Council endorsed an alternative motion to establish a Behaviour Complaints Committee and appoint all members of Council to the Committee. This was in response to further research and practical examples from other local governments where appointing all Councillors to the Committee removed any perception of bias in its decision making (C2111/087).

OFFICER COMMENT

Since the implementation of the current policy, the City's Complaints Officer has referred five complaints in relation to alleged breaches of behaviour to the Committee. This has provided officers with the opportunity to review what elements of the Policy work well and which elements are less effective. Additionally, officers have had the opportunity to discuss with other local governments their experiences in managing complaints.

Officers are recommending several amendments to the Policy and the process by which complaints are managed. Key changes are:

- the implementation of a response form to be completed by the person to whom the complaint relates (the Respondent) and submitted to the City's Complaints Officer;
- mediation to be an option for the Complainant and Respondent to opt in through the complaint and response form, and to be arranged by the Complaints Officer if requested;
- initial assessment of the complaint by the Complaints Officer based on the complaint and response form submitted, with option to for the Complaints Officer to make a recommendation for the complaint to be dismissed if it meets the relevant section of the Code or to assess the complaint and determine a recommendation to the Committee. Use of an external assessor remains an option at the Complaints Officer's discretion;
- change in terminology from Investigator to Assessor to reflect that investigation beyond the submitted complaint and response form is not a feature;
- the Committee's findings and its reasons to be made publicly available;
- an action plan to be developed by the City's Complaints Officer or an external party as determined by the Committee finding, as opposed to prior, and endorsed by the Committee at a meeting separate to the determination of the complaint;
- a reduction in timeframes throughout the complaints management process; and
- removal of the ability for the CEO to refer a complaint to the Council, given all Councillors are now appointed to the Committee and that the Committee delegation requires those party to the complaint to leave the meeting.

The changes are designed to streamline the management of complaints in order to achieve a timelier and cost effective outcome.

While the use of an external assessor is considered necessary and appropriate in most instances, there may be some complaints that the Complaints Officer can readily determine or recommend dismissal of, and the Complaints Officer should, where guidance is provided by the Committee, be able to determine an action plan.

Statutory Environment

Section 5.103 of the *Local Government Act 1995* (the Act) [Model code of conduct for council members, committee members and candidates] provides that regulations must prescribe a Model Code of conduct for council members, committee members and candidates and must include –

- (a) general principles to guide behaviour; and
- (b) requirements relating to behaviour; and
- (c) provisions specified to be rules of conduct,

and may include provisions about how to deal with alleged breaches of the behaviour requirements.

Relevant Plans and Policies

The officer recommendation aligns to the City's Code of Conduct for Council Members, Committee Members and Candidates.

Financial Implications

The cost to date in managing complaints of alleged breaches of behaviour totals \$13,984. The proposed changes to the Policy seek to reduce these costs.

Stakeholder Consultation

The City of Busselton participated in a 'feedback lab' in February run by the Department of Local Government, Sport and Cultural Industries, where other local governments shared their experiences.

Many local governments have adopted a model similar to ours (as per the WALGA proposal), however through consultation we have identified improvements such as the use of a standard response form.

Alternative models do also exist – for instance, for the Council to determine the complaints in session without the recommendation of an officer / assessor. At this stage however officers believe the Policy with the proposed revisions strikes the right balance.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. No risks of a medium or greater level have been identified.

Options

As an alternative to the officer recommendation the Council could determine not to make any changes to the Policy or to make additional or different amendments.

CONCLUSION

The City has processed five complaints of alleged breaches of behaviour under the Code, and through this experience has identified a number of improvements in the way in which complaints are managed. The changes proposed to the Policy are aimed at a more timely and cost effective management process.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented within one week of Council's endorsement.



Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour

Responsible Directorate: Finance and Corporate Services **Version:** Adopted

1. PURPOSE

- 1.1. The purpose of this Policy is to outline the City's approach to the management of complaints relating to breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

2. SCOPE

- 2.1. This Policy is applicable to complaints about breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.
- 2.2. A breach of Part 4 of the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:
- a. complaints made with the intent of addressing personal grievances or disagreements;
 - b. complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
 - c. minor breaches under section 5.105(1) of the Act;
 - d. serious breaches under section 5.114 of the Act; and
 - e. allegations of corruption.

3. DEFINITIONS

Term	Meaning
Committee	The Behaviour Complaints Committee established under section 5.8 of the <i>Local Government Act 1995</i> and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
City's Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Investigator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to investigate complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled "Management of Complaints of Alleged Breaches of Behaviour".

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Theme 4 - Leadership of the City's Strategic Community Plan 2021-2031 and specifically the Strategic Priority 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
 - a. making a complaint;
 - b. dealing with a complaint;
 - c. dismissal of a complaint; and
 - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint; specifically the mechanism for investigating, determining, making recommendations and implementing action plans when dealing with alleged breaches of the behavioural requirements set out in the Code.

Investigating a complaint

- 5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour, and if required under paragraph 5.9, a Mediator.
- 5.5. A complaint cannot be submitted anonymously.
- 5.6. The City's Complaints Officer, within 14 days of receiving a complaint:
 - a. will contact the complainant acknowledging that the complaint has been received;
 - b. as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;
 - c. will outline the process that will be followed and possible outcomes and the application of confidentiality;
 - d. will provide the council or committee member to whom the complaint relates with a copy of this Policy, the Code, and a copy of the complaint, including the name of the complainant; and
 - e. will send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
- 5.7. Complaints are to be dealt with and considered in the order in which they are received by the City's Complaints Officer. If more than one complaint is received that relates to the same alleged behaviour, the City's Complaints Officer may determine to progress those complaints concurrently.
- 5.8. In investigating the complaint, the Investigator may request the City's Complaints Officer to search for any relevant records in the City's record management system.
- 5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.
- 5.10. If mediation is accepted by both parties, the investigative timelines outlined in this Policy are suspended until such time as the mediation is finalised or discontinued in accordance with paragraph 5.11.
- 5.11. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.

- 5.12. Before making an assessment in relation to a complaint, the Investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint, and to provide their own comments and evidence for consideration. The person to whom the complaint relates must do this within 21 days of formally being notified of the complaint.
- 5.13. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.
- 5.14. The Investigator's assessment must be made within 21 days from receiving a copy of the response to the allegations by the person to whom the complaint relates.
- 5.15. Within 21 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's Complaints Officer.
- 5.16. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required.
- 5.17. In making a recommendation of further action, the Investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.
- 5.18. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the Investigator's report to the City's Complaints Officer and included in the report to Council.
- 5.19. The Investigator may recommend to the Committee or Council to dismiss a complaint in accordance with clause 14.1 of the Code.
- 5.20. If the Investigator assesses that the behaviour is an offence under the City's *Standing Orders Local Law 2018*, the complaint should be referred back to the City's Complaints Officer.
- 5.21. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's Complaints Officer, but subject to any consultation with the person to whom the complaint relates.

Committee or Council finding

- 5.22. A meeting of the Committee must be convened within 21 days after receipt of the Investigators assessment, at which the City's Complaints Officer must provide a confidential report.
- 5.23. In accordance with clause 5.26, if the matter is referred to the Council, the City's Complaints Officer must provide a confidential report at the next practicable Council meeting.
- 5.24. The confidential report is to include:
 - a. a copy of the complaint;
 - b. the report of the Investigator together with the evidence received and any submissions or other communications from parties;
 - c. a recommendation on the question whether or not a breach of behaviour has occurred;
 - d. a recommendation as to whether any, and if so what, further action is required; and
 - e. an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.

- 5.25. Based on the Investigator's report, the evidence and any further comments or submissions by the parties, the Committee or Council may do one of the following:
- a. dismiss the complaint in accordance with clause 14.1 of the Code;
 - b. find the alleged breach has occurred and decide no further action is required;
 - c. find the alleged breach has occurred, decide that further action is required; and
 - i. vary the proposed action plan; or
 - ii. consider the adoption of the action plan.
 - d. find that the alleged breach has not occurred.
- 5.26. The CEO has the discretion to refer matter, in extraordinary circumstances, to Council to make a finding in relation to an alleged breach of behaviour.

Action plans

- 5.27. An action plan should outline:
- a. the behaviour/s of concern;
 - b. the actions to be taken to address the behaviour/s;
 - c. who is responsible for the actions; and
 - d. an agreed timeframe for the actions to be completed.
- 5.28. In deciding whether to implement an action plan, the Committee or Council should consider:
- a. the nature and seriousness of the breach(es);
 - b. any submission made by the person to whom the complaint relates;
 - c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
 - d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
 - e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Confidentiality of complaints

- 5.29. The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the Committee has reached an outcome in respect of the complaint.

Compliance with plan requirement

- 5.30. The City's Complaints Officer is to monitor the actions and timeframes set out in an action plan.
- 5.31. Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.
- 5.32. The City's Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	10 November 2021	Resolution #	C2111/087
Previous Adoption	DATE	9 June 2021	Resolution #	C2106/113



Council Policy

Council Policy Name: Management of Complaints of Alleged Breaches of Behaviour

Responsible Directorate: Finance and Corporate Services

Version: Proposed

1. PURPOSE

- 1.1. The purpose of this Policy is to outline the City's approach to the management of complaints relating to alleged breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

2. SCOPE

- 2.1. This Policy is applicable to complaints about alleged breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.
- 2.2. A breach of Part 4 of the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:
- a. complaints made with the intent of addressing personal grievances or disagreements;
 - b. complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
 - c. minor breaches under section 5.105(1) of the Act;
 - d. serious breaches under section 5.114 of the Act; and
 - e. allegations of corruption.

3. DEFINITIONS

Term	Meaning
Committee	the Behaviour Complaints Committee established under section 5.8 of the <i>Local Government Act 1995</i> and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Complainant	a person lodging a complaint
Assessor	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to assess complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled "Management of Complaints of Alleged Breaches of Behaviour".
Respondent	the Council or Committee member to whom a complaint relates

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Theme 4 - Leadership of the City's Strategic Community Plan 2021-2031 and specifically the Strategic Priority 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

- 5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.
- 5.2. The Code sets out requirements for:
 - a. making a complaint;
 - b. dealing with a complaint;
 - c. dismissal of a complaint; and
 - d. withdrawal of a complaint.
- 5.3. This Policy further outlines how the City will deal with a complaint of alleged breaches of the behavioural requirements set out in the Code.

Complaint Submission and Response

- 5.4. A complaint must be submitted to the Complaints Officer and cannot be submitted anonymously.
- 5.5. The Complaints Officer, within 7 days of receiving a complaint:
 - a. will contact the Complainant acknowledging that the complaint has been received;
 - b. will outline the process that will be followed and the application of confidentiality;
 - c. will provide the Respondent with a copy of the complaint, including the name of the Complainant; and the City's response form.
- 5.6. The Respondent will complete and submit the response form to the Complaints Officer within 7 days of receiving notification from the Complaints Officer.
- 5.7. If more than one complaint is received that relates to the same alleged behaviour, the Complaints Officer may determine to progress those complaints concurrently.
- 5.8. If mediation is requested by both parties, the Complaints Officer will appoint a Mediator and the assessment timelines outlined in this Policy will be suspended until such time as the mediation is finalised in accordance with paragraph 5.9 or discontinued.
- 5.9. The Complainant must within 5 days of mediation lodge a withdrawal of complaint in accordance with the Code, or the assessment of the complaint will continue.

Assessment of the Complaint

- 5.10. Within 7 days of receiving a response from the Respondent, the Complaints Officer will undertake a review of the complaint to determine:
 - a. whether it could be dismissed under Clause 14.1 of the Code; or
 - b. whether they will refer the complaint to an Assessor; or
 - c. make an assessment themselves as to whether the alleged behaviour breach has occurred.
- 5.11. Where a complaint is to be referred to an Assessor, the Complaints Officer must engage an Assessor within 14 days of receiving a response from the Respondent.
- 5.12. The Assessor must provide to the Complaints Officer a report containing a determination within 21 days of receiving a copy of the complaint and response.
- 5.13. In assessing the complaint, the Assessor may request the Complaints Officer to search for any relevant records in the City's record management system.

- 5.14. A meeting of the Committee must be convened:
- a. within 14 days after receipt of the Assessor's assessment; or
 - b. where recommended for dismissal or assessed by the Complaints Officer, within 21 days of the Complaints Officer having received the response from the Respondent.

Committee finding

- 5.15. The Complaints Officer must present each complaint to the Committee in a confidential report. The report is to include:
- a. a copy of the complaint;
 - b. a copy of the response;
 - c. any evidence received and any submissions or other communications from parties;
 - d. the report of the Assessor where relevant;
 - e. a recommendation on the question whether or not a breach of behaviour has occurred;
 - f. a recommendation as to whether any further action is required.
- 5.16. Based on the Complaints Officer's report, and the evidence presented, the Committee may do one of the following:
- a. dismiss the complaint in accordance with clause 14.1 of the Code;
 - b. find the alleged breach has occurred and decide no further action is required;
 - c. find the alleged breach has occurred, decide that further action is required and request that the Complaints Officer prepare an action plan; or
 - d. find that the alleged breach has not occurred.
- 5.17. In deciding whether to implement an action plan, the Committee should consider:
- a. the nature and seriousness of the breach(es);
 - b. any submission made by the person to whom the complaint relates;
 - c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;
 - d. whether the person to whom the complaint relates has breached the Code on previous occasions; and
 - e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.

Action plans

- 5.18. If the Committee has made a finding in accordance with clause 5.16(c) to prepare an action plan, the Complaints Officer will prepare an action plan in consultation with the person to whom the complaint relates or engage a suitably qualified third party to prepare an action plan.
- 5.19. An action plan should outline:
- a. the behaviour/s of concern;
 - b. the actions to be taken to address the behaviour/s;
 - c. who is responsible for the actions; and
 - d. an agreed timeframe for the actions to be completed.

Confidentiality of complaints

- 5.20. The complaint, response and any deliberations and assessment by the Complaints Officer / Assessor are confidential as they relate to the affairs of a person.
- 5.21. The Committee's findings and reasons will be published in the Committee minutes.

Compliance with plan requirement

5.22. The Complaints Officer is to monitor the actions and timeframes set out in an action plan.

5.23. Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.

5.24. The Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	10 November 2021	Resolution #	C2111/087



Council Policy

Council Policy Name: **Management of Complaints of Alleged Breaches of Behaviour**

Responsible Directorate: **Finance and Corporate Services** Version: **Adopted**~~Proposed~~

1. PURPOSE

- 1.1. The purpose of this Policy is to outline the City's approach to the management of complaints relating to alleged breaches of the behaviour requirements in Part 3 of the City of Busselton Code of Conduct for Council Members, Committee Members and Candidates (the Code).

2. SCOPE

- 2.1. This Policy is applicable to complaints about alleged breaches of the behaviour requirements in Part 3 of the Code, and should be read in conjunction with the Code.
- 2.2. A breach of Part 4 of the Code is a minor breach under section 5.105(1) of the Act, and is not the intended subject of this Policy. The following are inappropriate to be dealt with under this Policy:
- a. complaints made with the intent of addressing personal grievances or disagreements;
 - b. complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
 - c. minor breaches under section 5.105(1) of the Act;
 - d. serious breaches under section 5.114 of the Act; and
 - e. allegations of corruption.

3. DEFINITIONS

Term	Meaning
Committee	The The Behaviour Complaints Committee established under section 5.8 of the <i>Local Government Act 1995</i> and delegated the power to make findings of complaints of alleged breaches of Part 3 of the Code
City's Complaints Officer	a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 12.3 of the Code to receive complaints and withdrawals of complaints and in accordance with this Policy.
Complainant	<u>a person lodging a complaint</u>
Assessor Investigator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to <u>investigate-assess</u> complaints in accordance with this Policy.
Mediator	an impartial third party, appointed by the CEO, with the skills, knowledge and experience to facilitate mediation between the person to whom the complaint relates and the complainant in accordance with this Policy.
Policy	this City of Busselton Council policy titled "Management of Complaints of Alleged Breaches of Behaviour".
Respondent	<u>the Council or Committee member to whom a complaint relates</u>

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Theme 4 - Leadership of the City's Strategic Community Plan 2021-2031 and specifically the Strategic Priority 4.2: Deliver governance systems that facilitate open, ethical and transparent decision making.

5. POLICY STATEMENT

5.1. The Code provides for requirements relating to the behaviour of council members, committee members and candidates.

5.2. The Code sets out requirements for:

- making a complaint;
- dealing with a complaint;
- dismissal of a complaint; and
- withdrawal of a complaint.

5.3. This Policy further outlines how the City will deal with a complaint, ~~specifically the mechanism for resolving, investigating, determining, making recommendations and implementing action plans when dealing with~~ alleged breaches of the behavioural requirements set out in the Code.

Investigating a complain Complaint Submission and Response

~~5.4. The Chief Executive Officer (CEO) will appoint an Investigator to investigate complaints of alleged breaches of behaviour, and if required under paragraph 5.105.9, a Mediator.~~

~~5.5.5.4. A complaint must be submitted to the Complaints Officer and complaint cannot be submitted~~ anonymously.

~~5.6.5.5. The City's Complaints Officer, within 147 days of receiving a complaint:~~

- ~~will contact the Complainant acknowledging that the complaint has been received;~~
- ~~as part of the acknowledgment process, will provide the complainant with a copy of this Policy and the Code;~~
- ~~will outline the process that will be followed and possible outcomes and the application of confidentiality;~~
- ~~will provide the council or committee member to whom the complaint relates Respondent with a copy of this Policy, the Code, and a copy of the complaint, including the name of the Complainant; and the City's response form.~~

~~5.7.5.6. The Respondent will complete and submit the response form to the Complaints Officer within 7 days of receiving notification from the Complaints Officer send to the Investigator the complaint together with details of the alleged breach and any supporting evidence provided by the complainant.~~

~~5.7. Complaints are to be dealt with and considered in the order in which they are received by the City's Complaints Officer. If more than one complaint is received that relates to the same alleged behaviour, the City's Complaints Officer may determine to progress those complaints concurrently.~~

~~5.8. If mediation is requested by both parties, the Complaints Officer will appoint a Mediator and the assessment timelines outlined in this Policy will be suspended until such time as the mediation is finalised in accordance with paragraph 5.9 or discontinued.~~

~~5.9. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, The Complainant must, before the assessment of the complaint, within 5 days of mediation lodge a withdrawal of complaint in accordance with the Code, or the. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.~~

~~5.8. In investigating the complaint, the Investigator may request the City's Complaints Officer to search for any relevant records in the City's record management system.~~

~~5.9. The Investigator must offer mediation to both parties as the first option for dealing with a complaint and before progressing with the assessment of the complaint.~~

~~5.10. If mediation is accepted by both parties, the investigative timelines outlined in this Policy are suspended until such time as the mediation is finalised or discontinued in accordance with paragraph 5.14.~~

~~5.11. If issues raised in the complaint are resolved to the satisfaction of both parties in mediation, or otherwise, the complainant must, before the assessment of the complaint, lodge a withdrawal of complaint in accordance with the Code. In the event that the complainant does not withdraw the complaint, assessment of the complaint will continue.~~

~~5.12. Before making an assessment in relation to a complaint, the Investigator must provide the person to whom the complaint relates with an opportunity to respond to the allegations in the complaint, and to provide their own comments and evidence for consideration. The person to whom the complaint relates must do this within 1421 days of formally being notified of the complaint.~~

~~5.13.~~

~~5.14. After considering a complaint, the Investigator must make an assessment as to whether or not the alleged behaviour breach has occurred.~~

Assessment of the Complaint

~~5.10. Within 7 days of receiving a response from the Respondent, the Complaints Officer will undertake a review of the complaint to determine~~

~~a. whether it could be dismissed under Clause 14.1 of the Code; or~~

~~b. whether they will refer the complaint to an Assessor or make an assessment themselves as to whether the alleged behaviour breach has occurred.~~

~~5.11. Where a complaint is to be referred to an Assessor, the Complaints Officer must engage an Assessor within 14 days of receiving a response from the Respondent.~~

~~5.15. 5.12. The Investigator's assessment-The Assessor must be provide to the Complaints Officer a report containing a determination made within 21 days from of receiving a copy of the complaint and response to the allegations by the person to whom the complaint relates.~~

~~5.13. In assessing the complaint, the Assessor may request the Complaints Officer to search for any relevant records in the City's record management system.~~

~~5.14. A meeting of the Committee must be convened:~~

~~a. within 14 days after receipt of the Assessor's assessment; or~~

~~a-b. where recommended for dismissal or assessed by the Complaints Officer, within 21 days of the Complaints Officer having received the response from the Respondent.~~

~~5.16. Within 1421 days of making an assessment on the alleged behaviour breach, the Investigator must provide a report to the City's Complaints Officer.~~

~~5.17. If the Investigator makes an assessment that the alleged breach has occurred, the report must make a recommendation as to whether further action is required, including the preparation of an action plan.~~

~~5.18. In making a recommendation of further action, the Investigator is to prepare an action plan to address the behaviour of the person to whom the complaint relates.~~

~~5.19. An action plan should be prepared in consultation with the person to whom the complaint relates. If the person to whom the complaint relates does not participate in the preparation of an action plan, this is to be noted in the Investigator's report to the City's Complaints Officer and included in the report to Council.~~

~~5.20.~~

~~5.21. The Investigator may recommend to the Committee or Council to dismiss a complaint in accordance with clause 14.1 of the Code.~~

~~5.22. If the Investigator assesses that the behaviour is an offence under the City's Standing Orders Local Law 2018, the complaint should be referred back to the City's Complaints Officer.~~

~~5.23. The Investigator's deliberations and assessment are to be confidential and reported only to the CEO and the City's Complaints Officer, but subject to any consultation with the person to whom the complaint relates.~~

Committee or Council finding

~~5.24. A meeting of the Committee must be convened within 21 days after receipt of the Investigator's assessment, at which the City's Complaints Officer must provide a confidential report.~~

~~5.25. In accordance with clause 5.26, if the matter is referred to the Council, the City's Complaints Officer must provide a confidential report at the next practicable Council meeting.~~

~~5.26.5.15. The Complaints Officer must present each complaint to the Committee in a~~ The confidential report.

The report is to include:

~~a. a copy of the complaint;~~

~~a.b. a copy of the response;~~

~~c. any evidence received and any submissions or other communications from parties;~~

~~b.d. the report of the Investigator Assessor where relevant; together with the evidence received and any submissions or other communications from parties;~~

~~e.e. a recommendation on the question whether or not a breach of behaviour has occurred;~~

~~f. a recommendation as to whether any, and if so what, further action is required.~~

~~; and~~

~~— an action plan, prepared in consultation with the person to whom the complaint relates, if relevant.~~

~~5.27.5.16. Based on the Investigator's Complaints Officer's report, and the evidence presented, and any further comments or submissions by the parties, the Committee or Council may do one of the following:~~

~~a. dismiss the complaint in accordance with clause 14.1 of the Code;~~

~~b. find the alleged breach has occurred and decide no further action is required;~~

~~b. find the alleged breach has occurred, decide that further action is required and; and~~

~~request that the Complaints Officer the Investigator prepare an action plan; or vary the proposed action plan;~~

~~or~~

~~d.c. consider the adoption of the action plan.~~

~~e.d. find that the alleged breach has not occurred.~~

~~5.17. In deciding whether to implement an action plan, the Committee or Council should consider:~~

~~a. the nature and seriousness of the breach(es);~~

~~b. any submission made by the person to whom the complaint relates;~~

~~c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;~~

~~—whether the person to whom the complaint relates has breached the Code on previous occasions;
and
d. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.~~

~~5.28. The CEO has the discretion to refer the matter, in extraordinary circumstances, to Council to make a finding in relation to an alleged breach of behaviour.~~

Action plans

~~5.18. If the Committee or Council has made a finding in accordance with clause 5.2417(c) to prepare an action plan, the Complaints Officer will Investigator should prepare an action plan in consultation with the person to whom the complaint relates or engage a suitably qualified third party to prepare an action plan.~~

~~5.29-5.19.~~ An action plan should outline:

- a. the behaviour/s of concern;
- b. the actions to be taken to address the behaviour/s;
- c. who is responsible for the actions; and
- d. an agreed timeframe for the actions to be completed.

~~5.30-1.1. In deciding whether to implement an action plan, the Committee or Council should consider:~~

- ~~a. the nature and seriousness of the breach(es);~~
- ~~b. any submission made by the person to whom the complaint relates;~~
- ~~c. whether the person to whom the complaint relates breached the Code knowingly or carelessly;~~
- ~~d. whether the person to whom the complaint relates has breached the Code on previous occasions;~~
~~and~~
~~e. any other matters which may be regarded as contributing to the conduct or mitigating its seriousness.~~

Confidentiality of complaints

~~The complaint, its existence and details, and the processes undertaken in connection with it, are confidential matters and should not be disclosed unless and until the Committee has reached an outcome in respect of the complaint.~~

~~5.20. The complaint, response and any deliberations and assessment by the Complaints Officer / Assessor are confidential as they relate to the affairs of a person.~~

~~5.21. The Committee's findings and reasons will be published in the Committee minutes.~~

Compliance with plan requirement

~~5.31-5.22.~~ The City's Complaints Officer is to monitor the actions and timeframes set out in an action plan.

~~5.32-5.23.~~ Failure to comply with a requirement included in an action plan is a minor breach under section 5.105(1) of the *Local Government Act 1995* and clause 24.1 of the Code.

~~5.33-5.24.~~ The City's Complaints Officer must provide a report to Council advising of any failure to comply with a requirement included in an action plan.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*
- 6.2. *Local Government (Model Code of Conduct) Regulations 2021*
- 6.3. City of Busselton Code of Conduct for Council Members, Committee Members and Candidates
- 6.4. Code of Conduct Alleged Breach Form

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE	10 November 2021	Resolution #	C2111/087
Previous Adoption	DATE	10 November 2021 19 June 2021	Resolution #	C2111/087 C2106/113

7. GENERAL DISCUSSION ITEMS

8. NEXT MEETING DATE

9. CLOSURE