



Ordinary Council Meeting

Agenda

Wednesday 16 August 2023



Our Vision

Where environment, lifestyle and opportunity meet!

Community Aspirations



KEY THEME 1

Environment

An environment that is valued, conserved and enjoyed by current and future generations.



KEY THEME 2

Lifestyle

A place that is relaxed, safe and friendly, with services and facilities that support positive lifestyles and wellbeing.



KEY THEME 3

Opportunity

A vibrant City with diverse opportunities and a prosperous economy.



KEY THEME 4

Leadership

A Council that connects with the community and is accountable in its decision making.

NOTICE OF MEETING

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Council will be held in the Council Chambers, Administration Building, Southern Drive, Busselton on Wednesday 16 August 2023, commencing at 5:30pm.

Your attendance 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

CHIEF EXECUTIVE OFFICER

3 August 2023

BEHAVIOUR PROTOCOLS

The City of Busselton values are:

- Listening
- Considered Decision Making
- Appreciation
- Respect
- Teamwork

In accordance with these values, the following outlines the behaviour expectations while attending a Council meeting, Community Access Session, or Public Agenda Presentation:

- Listen respectfully through the meeting or presentation
- Respect the Council process and comply with directions from the Presiding Member
- Use respectful language when addressing Council, staff, and other members of the public
- Behave in a manner that is respectful and non-confrontational
- Do not use offensive language or derogatory language towards others

The City values the diverse input of the community and seeks to ensure that all members of the community can attend a meeting and have their say.

Council members, Committee members and Candidates are bound by the City's Code of Conduct and agree to uphold the values of the City of Busselton and principles of good behaviour, maintaining and contributing to a harmonious, safe, and productive environment.

Anyone who does not behave in accordance with the above values and behaviours may be asked by the Presiding Member to leave the gallery.

CITY OF BUSSELTON

Agenda for the Council Meeting to be held on Wednesday 16 August 2023

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1. OFFICIAL OPENING

The City of Busselton welcomes Councillors, staff, guests and members of the public to the Ordinary Council Meeting of 16 August 2023.

The City of Busselton acknowledges the Wadandi and Bibbulmun people as the traditional custodians of this region and pay respects to Elders past and present.

This meeting will be audio recorded for minute taking purposes and will also be live streamed on the City of Busselton YouTube channel.

A prayer will be read out as part of the opening of this meeting.

2. ATTENDANCE

APOLOGIES

Nil at time of publishing	
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LEAVE OF ABSENCE

Cr Sue Riccelli	C2303/016
Cr Mikayla Love	C2305/077

APPLICATION FOR LEAVE OF ABSENCE

Nil at time of publishing	
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3. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)

4. DISCLOSURES OF INTEREST

DISCLOSURES OF FINANCIAL INTEREST

A declaration under section 5.65 of the *Local Government Act 1995* requires that the nature of the interest must be disclosed. An elected member or employee who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter on which the subject of the declaration without the approval of the Council in accordance with the Act.

DISCLOSURES OF IMPARTIALITY INTEREST

Elected members and employees are required, in addition to declaring any financial interest, to declare an interest that might cause or perceive to cause a conflict. If the elected member or employee declares that their impartiality will not be affected then they may participate in the decision-making process.

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1. Ordinary Council Meeting 26 July 2023

RECOMMENDATION

That the Minutes of the Ordinary Council Meeting 26 July 2023 be confirmed as a true and correct record.

5.2. Special Council Meeting 26 July 2023

RECOMMENDATION

That the Minutes of the Special Council Meeting 26 July 2023 be confirmed as a true and correct record.

6. PUBLIC QUESTION TIME

Public question time allows members of the public to participate in local government by asking questions of the Council in relation to issues affecting the City. It also assists the City in identifying issues of importance to the community and assists the public to be better informed about how the City is governed.

6.1. RESPONSES TO PREVIOUS QUESTIONS TAKEN ON NOTICE

The following questions were taken on notice at the 26 July 2023 Ordinary Council Meeting.

Below is a summary of the question and response provided by the CEO.

Mr Keith Sims

Question

I received a letter from the Office of the Minister for Local Government in relation to the upcoming elections. The letter states that *'all offices of the City Councillors will be vacated and elections to be held for those offices'*.

Will all the offices be made vacant for all nine positions?

Response

Response provided 1 August 2023

(Mr Tony Nottle, Chief Executive Officer)

The City has been advised there will be four ordinary vacancies and the Mayoral position. Since receiving the resignation of Cr Henley, another two year vacancy will be added. Correspondence received from the Minister of Local Government office on 1 August 2023 states:

"...the orders published in the Government Gazette on 30 June 2023, and the summary published on the DLGSC website are all correct – going forward, the City will have eight council members and one directly-elected Mayor, and there will not be a spill of continuing incumbent council members at the upcoming ordinary elections. The City will typically have four councillor positions coming up for election at each ordinary election.

Accordingly, the upcoming ordinary elections will be for a Mayor, and for four councillor positions. However, I also understand that Mayor Henley has advised of his intention to resign his position of councillor, which would have expired in 2025. Accordingly it may be possible for that extraordinary vacancy to also be filled at the ordinary election in accordance with the relevant provisions of the Local Government Act 1995."

6.2. QUESTION TIME FOR PUBLIC

Public question time procedures and guidance

- The City will allocate a minimum of 15 minutes and a maximum of 30 minutes per Council meeting for public question time.
- Members of the public should register their intent to ask a question at a Council meeting by completing and submitting the [Public Question Time form](#) before 4pm the day prior to the relevant meeting.
- Members of the public will be invited to ask their question in order of registration.
- Questions will be limited to three per person. Additional questions may be permitted by the Presiding Member where time permits.
- Where a person is not present to ask their submitted question it will be responded to administratively as general correspondence.
- Questions may be taken on notice, to be responded to at a later time by the CEO in accordance with clause 6.7 of the Standing Orders.
- Public question time is for the tabling of questions, not for members of the community to make statements. For context, the Presiding Member may allow a short preamble.
- Questions containing defamatory remarks or offensive language, or that question the competency or personal affairs of Elected Members or employees may be ruled inappropriate by the Presiding Member subject to the Presiding Member taking reasonable steps to assist the member of the public to rephrase the question.
- There will be no debate or discussion on the response provided.

For further information, please see the [Meetings, Information Sessions and Decision Making Processes Policy](#).

7. RECEIVING OF PETITIONS, PRESENTATIONS AND DEPUTATIONS

7.1. PETITIONS

Extract from *City of Busselton Standing Orders Local Law 2018*

6.9 Petitions

- (1) A petition, in order to be considered by the Council, is to –
 - (a) be addressed to the Mayor;
 - (b) be made by the electors of the district;
 - (c) state the request of each page of the petition;
 - (d) contain the name, address and signature of each elector making the request;
 - (e) contain a summary of the reasons for the request;
 - (f) state the name of the person whom, and an address at which, notice to the petitioners can be given;
 - (g) be respectful and temperate in its language.
- (2) Despite subclause (1), the Presiding member may allow a petition to be considered in circumstances where the petition complies with the majority if the requirements in subclause (1).
- (3) In response to a petition presented to it, the Council may determine –
 - (a) that the petition be received;
 - (b) that the petition be rejected;
 - (c) that the petition be received and referred to the CEO to prepare a report to Council or a committee; or
 - (d) that the petition be received and referred to the CEO for action.
- (4) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented at that meeting, unless –
 - (a) the matter is the subject of a report included in the agenda; and
 - (b) the Council has considered the issues raised in the petition.

7.2. PRESENTATIONS BY PARTIES WITH AN INTEREST

Extract from *City of Busselton Standing Orders Local Law 2018*

6.10 Presentations by parties with an interest

- (1) Once an agenda of a meeting of the Council has been issued, parties with a demonstrable interest in any item listed on the agenda for discussion may seek to present to the Council at the time during the meeting allocated for this purpose.
- (2) A person must demonstrate that they are a party with an interest in an item on the agenda by stating their name, the item to which they wish to speak, whether or not they are in agreement with the recommendation in the agenda and they are—
 - (a) the applicant or one duly authorised representative of the applicant;
 - (b) an adjoining neighbour sharing a common length of boundary or directly opposite neighbour of the affected property;

- (c) one person duly representing a community-based organisation where an item on the agenda has broad community impact and is associated with the objectives of the organisation; or
 - (d) such other person as in the opinion of the presiding member has a significant direct interest or is duly representing those that have a significant direct interest in the item.
- (3) A person addressing the Council on an agenda item will be limited to a period of 5 minutes unless the person is granted an extension by the presiding member.
 - (4) Where multiple parties wish to present on an item, the applicant (or their duly authorised representative) is to be given the opportunity to give the final presentation on the item.
 - (5) Members may, through the presiding member, question a person addressing the Council on the item but no debate or general discussion will be permitted.

7.3. DEPUTATIONS

8. QUESTIONS BY MEMBERS OF WHICH DUE NOTICE HAS BEEN GIVEN (WITHOUT DISCUSSION)

9. ITEMS BROUGHT FORWARD FOR THE CONVENIENCE OF THOSE IN THE PUBLIC GALLERY

ADOPTION BY EXCEPTION RESOLUTION EN BLOC

Extract from the *City of Busselton Standing Orders Local Law 2018*

5.10 Adoption by exception resolution

- (1) In this clause adoption by exception resolution means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the committee or employee recommendation as the Council resolution.
- (2) The Council may pass an adoption by exception resolution.
- (3) An adoption by exception resolution may not be used for a matter—
 - (a) that requires a 75% majority or a special majority;
 - (b) in which an interest has been disclosed;
 - (c) that is a matter on which a member wishes to ask a question;
 - (d) that is a matter on which a member wishes to make a statement; or
 - (e) that is a matter on which a member wishes to move a motion that is different to the recommendation.
- (4) A member who wishes to ask a question or make a statement in relation to a matter that would otherwise be within an adoption by exception motion should, as far as practicable, notify the CEO by 3pm on the day before the meeting.
- (5) A member who wishes to move a motion that is different to the recommendation in a matter that would otherwise be within an adoption by exception resolution should, as far as practicable, give notice of the motion that –
 - (a) is in writing;
 - (b) identifies the matter and gives the reason or reasons for the motion; and
 - (c) is given to the CEO by 3pm on the day before the meeting.
- (6) Where a member intends to move a motion referred to in sub-clause (5), the CEO must be given an opportunity to provide advice to the Council prior to consideration of the motion, in accordance with section 5.41 (b) of the Act .

The below recommendation is subject to any items subsequently removed in accordance with section 5.10(5) of the City of Busselton Standing Orders Local Law 2018.

Officer Recommendation

That the Committee Recommendations for items 10.1, 10.3, 10.4, 10.5, 10.6, and 10.7, and Officer Recommendations for items 11.1, 11.2, 12.1, 12.2, 15.1 and 15.2 be carried en bloc.

Item	Report
10.1	Policy and Legislation Committee - 26/07/2023 - Dogs Local Law
10.3	Policy and Legislation Committee - 26/07/2023 - Review of the Policy and Legislation Committee

Item	Report
10.4	Policy and Legislation Committee - 26/07/2023 – Rescission of Council Policy 'Swearing in of Elected Members'
10.5	Policy and Legislation Committee - 26/07/2023 – Review of Council Policy 'Fees, Allowances and Expenses for Elected Members'
10.6	Policy and Legislation Committee - 26/07/2023 –Review of Council Policy 'Designation of Senior Employee and Acting CEO'
10.7	Policy and Legislation Committee - 26/07/2023 –Review of Council Policy 'Closed Circuit Television Systems'
11.1	Amendment 54 to Local Planning Scheme 21 Lot 2883 Puzey Road, Wilyabrup
11.2	Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area
12.1	Naming Port Geographe Coves and Parks
12.2	RFT10/23 Arboriculture Services
15.1	Councillors Information Bulletin
15.2	Council Policy - Appointment of Acting Chief Executive Officer

Items to be considered by separate resolution.

Item	Report	Reason
10.2	Policy and Legislation Committee - 26/07/2023 - Delegation of Power to Dispose of Residential Property by Lease	Absolute Majority Required

10. REPORTS OF COMMITTEE

10.1 Policy and Legislation Committee - 26/07/2023 - Dogs Local Law

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Legal Officer - Briony McGinty
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
Nature of Decision:	Legislative: adoption of "legislative documents" such as local laws, local planning schemes and local planning policies.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Marked Up 2023 15.05 Dogs Local Law [6.1.1 - 18 pages] 2. Clean 2023 15.05 Dogs Local Law [6.1.2 - 18 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council:

- 1. Commences the law-making process for the *City of Busselton Dogs Local Law 2023*; the purpose and effect of the local law being as follows:**

Purpose: To repeal the Dogs Local Law of 2014 and make provisions about dogs which are permitted under the *Dog Act 1976*.

Effect: To provide Council with controls and regulatory measures in relation to matters such as the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs.
- 2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by:**
 - (a) Giving local public notice of the Proposed Local Law; and**
 - (b) Giving a copy of the Proposed Local Law and public notice to the Minister for Local Government.**
- 3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the Proposed Local Law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.**

OFFICER RECOMMENDATION

That the Council:

1. Commences the law-making process for the *City of Busselton Dogs Local Law 2023*; the purpose and effect of the local law being as follows:

Purpose: To repeal the Dogs Local Law of 2014 and make provisions about dogs which are permitted under the *Dog Act 1976*.

Effect: To provide Council with controls and regulatory measures in relation to matters such as the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs.

2. Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act 1995*, by:

- (a) Giving local public notice of the Proposed Local Law; and

- (b) Giving a copy of the Proposed Local Law and public notice to the Minister for Local Government.

3. Notes that the CEO, after the close of the public consultation period, will submit a report to the Council on any submissions received on the Proposed Local Law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

EXECUTIVE SUMMARY

Under the *Local Government Act 1995* (the Act) local governments are required to carry out periodic reviews of their local laws to determine whether they should be repealed or amended. The City's existing *City of Busselton Dogs Local Law 2014* (Current Local Law) was last amended in 2015 and requires review. An internal assessment has identified areas in which improvements could be made. It is recommended that Council initiates the law-making process and authorises the CEO to give local public notice of the proposed *City of Busselton Dogs Local Law 2023* (Proposed Local Law).

STRATEGIC CONTEXT

The provision of appropriate local laws in relation to dogs supports the good governance of the district.

BACKGROUND

The *Dog Act 1976* (the Dog Act) provides for the control, registration, ownership and keeping of dogs. Under the Dog Act, local governments may make local laws providing for, amongst other things:

- a) establishment and maintenance of dog management facilities,
- b) detention, care and release or disposal of dogs seized,

- c) licensing, use and inspection of approved kennel establishments; and
- d) requirements that premises where dogs are kept must be fenced in a manner capable of confining the dog.

Significant amendments to the Dog Act and associated regulations came into effect in 2013. Those amendments included the capacity for local governments to determine dog exercise and dog prohibited areas via Council resolution (rather than through an amendment to its local law). As a result, several provisions in the City's then "Dog by-laws" became obsolete. In 2014 the City adopted the Current Local Law to be consistent with the new Dog Act.

Section 3.16 of the Act requires that a local government should review its local laws every 8 years to determine whether they should be repealed or amended. The Current Local Law was gazetted in 2014 and was further amended in 2015. The Current Local Law is based on the WALGA model and has operated well since its inception. However, City officers have conducted an internal review which has resulted in proposed changes. Those changes have been incorporated into the Proposed Local Law which is presented to Council for consideration.

OFFICER COMMENT

State legislation provides for a three tiered system for regulating the care for and control of dogs, as outlined below:

Dog Act

Under the Dog Act local governments are provided with legislative controls in relation to matters such as:

- a) registration and identification of dogs;
- b) power to seize dogs;
- c) dogs to wear collars and registration tags;
- d) declaring of and dealing with dangerous dogs; and
- e) what constitutes a dog nuisance and how to deal with such a nuisance.

Local Laws

The Dog Act also extends to local governments the power to regulate, by way of a local law, matters such as:

- a) impounding of dogs;
- b) number of dogs that can be kept;
- c) establishment of approved kennels;
- d) manner in which dogs are to be confined by the occupier of a premises; and
- e) creation of offences for non-compliance with certain provisions of a local law.

Council resolutions

Local governments can determine dog exercise areas and areas where dogs are prohibited by an absolute majority decision after giving 28 days' notice of its intention to do so.

This report only deals with the local law-making power.

The City's Current Local Law is based on the WALGA model and is consistent with those of many other local governments. However, in reviewing the Current Local Law several changes have been identified as appropriate, to achieve a more contemporary local law. The changes can be seen in the "marked-up" version at Attachment A. For administrative ease, it is proposed to repeal the Current Local Law and replace it with the Proposed Local Law (rather than present an amendment local law), found at Attachment B.

The Proposed Local Law is divided into parts, described further below:

Part 1

The preliminary section deals with matters of a more technical nature including the official title of the local law, the commencement date, the area to which the local law shall apply, repealing the Current Local Law and defining terminology used in the local law.

Part 2

This section deals with the impounding of dogs. It provides for fees, charges and costs to be imposed and determined by Council in relation to the seizure and impounding, release and/or destruction and disposal of a dog and the times at which an authorised person (previously referred to as "pound keeper") has to be in attendance at the animal management facility (previously referred to as "pound").

Part 3

This section requires from an occupier of a premises on which a dog is kept to cause the relevant portion of such premises to be fenced in a manner capable of confining the dog. It also limits the number of dogs which may be kept on any premises (other than an approved kennel establishment), to 2 dogs and the young of those dogs under the age of 3 months. The Proposed Local Law also includes a provision where, if located in an area zoned rural, then the limit of dogs which may be kept without a permit under section 26(3) of the Dog Act increases to 4. This is consistent with the WALGA template (with minor wording changes). The purpose of this change is to remove the necessity for owners of rural premises to apply for a permit for the keeping of 3 or 4 dogs, which, based on the experience of City rangers, will likely be granted in any event due to the size of the property.

Part 4

This section regulates the process for obtaining and transferring a license for an approved kennel establishment and its cancellation. It requires an applicant to give notice of the proposed use of the premises as a kennel establishment (notice to be given in a newspaper circulating in the district and to owners and occupiers of adjoining premises). It also provides for payment of fees in relation to applying for and issuing of a license for an approved kennel establishment.

Part 5

Under this section a dog must not excrete on a public place or on privately owned land without the consent of the occupier of such land. It also requires from a person in control of such a dog to immediately remove excreta, failing which such a person commits an offence.

Part 6

This section of the Proposed Local Law deals with enforcement. A range of modified penalties (specified in Schedule 3 of the local law) are created and persons responsible for enforcing the Proposed Local Law are authorised to issue infringement notices. The modified penalties for offences have not been updated since the Current Local Law's inception in 2014. Given the maximum modified penalty that can be imposed in a local law is \$500 per offence, the new general modified penalty of \$200 per offence is seen as appropriate (and in line with other local governments). A higher penalty applies for failing to provide means for effectively confining a dog that has been declared dangerous, given the potential consequences of such a failure.

Schedules

Schedule 1 of the Proposed Local Law consists of a template application for a licence for an approved kennel establishment. Schedule 2 contains draft conditions which could be imposed on a licence for an approved kennel establishment. Under Schedule 3 the offences in respect of which modified penalties apply, are specified.

Statutory Environment

Dog Act 1976

Section 51 of the Dog Act specifies the dog related matters in relation to which local governments may make local laws.

Local Government Act 1995

Section 3.16 of the Act requires that every 8 years a local law should be reviewed to determine whether it should be repealed or amended.

Section 3.5 of the Act provides Council with the head of power for making local laws, which stipulates:

A local government may make Local Laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

The procedure for making local laws is set out in sections 3.12 to 3.17 of the Act and regulation 3 of the *Local Government (Functions and General) Regulations 1996* (WA). The person presiding at a Council meeting is to give notice of the purpose and effect of a proposed local law by ensuring that:

- the purpose and effect of the proposed local law is included in the agenda for that meeting; and
- the minutes of that Council meeting include the purpose and effect of the proposed local law.

The purpose and effect of the Proposed Local Law is as follows:

Purpose: To repeal the Dogs Local Law of 2014 and make provisions about dogs which are permitted under the *Dog Act 1976*.

Effect: To provide Council with controls and regulatory measures in relation to matters such as the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs.

Local public notice is to be given by advertising the Proposed Local Law in accordance with the requirements of sections 3.12(3) of the LG Act. The submission period must run for a minimum period of six weeks after which Council, having considered any submissions received, may resolve to make the local law as proposed or make a local law that is not significantly different from what was proposed.

Parliamentary Scrutiny

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has an adverse effect on existing rights or ousts or modifies the rules of fairness. Parliament has appointed the Joint Standing Committee on Delegated Legislation (JSC) which is a committee of State politicians from both houses of the Western Australian Parliament, to undertake an overseeing role on its behalf, which includes the power to scrutinise and recommend the disallowance of local laws to the Parliament. After gazettal, a copy of the Local Law will be sent to the JSC who will examine the local law and determine whether it complies with the abovementioned criteria.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

Financial Implications

Costs associated with the advertising and gazettal of the Proposed Local Law will come from the legal budget. These costs are unlikely to exceed \$2,000. The increase in penalties is unlikely to materially impact the City's financial position.

External Stakeholder Consultation

Should Council resolve to commence the process of making the Proposed Local Law, public submissions will be invited as part of the statutory consultation process prescribed under section 3.12(3) of the Act. The submission period must run for a minimum period of 6 weeks after which the Council, having considered any submissions received, may resolve to adopt the Proposed Local Law or a law which is not significantly different.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City’s risk management framework.

No risks of a medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could choose to vary the provisions of the Proposed Local Law in any number of ways. However, for the reasons outlined in this report, the Proposed Local Law is the form of local law recommended.

There will be further opportunity for considering and making changes to the Proposed Local Law following the public consultation process outlined above, provided the changes are not significantly different from what is currently proposed. If any changes are of a significant nature the local law would need to be re-advertised.

CONCLUSION

It is recommended that the Council initiate the law-making process and authorise the CEO to commence advertising the Proposed Local Law.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
Advertising of Proposed Local Law for public consultation commenced	August 2023
Report to Council on results of public consultation	October 2023

10.2 Policy and Legislation Committee - 26/07/2023 - Delegation of Power to Dispose of Residential Property by Lease

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Senior Leasing and Property Officer - Ann Strang
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
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 Requirements:	Absolute Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Proposed DA 1 - 22C Disposition of Residential Property by Lease [6.2.1 - 1 page]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council adopts the instrument of delegation at Attachment 1.

OFFICER RECOMMENDATION

That the Council adopts the instrument of delegation at Attachment 1.

EXECUTIVE SUMMARY

This report proposes that Council adopt a new delegation for the disposal of residential property by lease to a person.

STRATEGIC CONTEXT

The provision of housing by lease supports the strategic priority of providing diverse and affordable housing options for our community. Appropriate delegation of authority for the function of leasing of residential property is important for providing good governance and efficient decision making.

BACKGROUND

The City of Busselton currently has an interest in more than 50 residential premises. These include:

- 28 units known as Winderlup Villas at 6 Marine Terrace and 21 West Street, Busselton operated by the City under a Joint Venture Agreement with the Housing Authority to provide community housing to eligible seniors;

- 14 units known as Kweelam Court at 26 Harris Road, Busselton, operated under a Joint Venture Agreement with the Housing Authority to provide community housing to eligible seniors;
- 7 units known as Winderlup Court at 21 West Street, Busselton for seniors; and
- a house located 78 Vasse Highway, Bovell.

The existing delegations for disposal of property do not specifically deal with the disposal of residential property by lease. Historically officers have relied on a previous signing delegation to dispose of residential property by lease. The purpose of this report is to provide a clear delegation of authority to the CEO to lease residential property to a person.

OFFICER COMMENT

Delegations of authority are an integral part of the City's governance functions. Delegations of authority are an effective and efficient means of carrying out the functions or discharging the duties of the local government, by allowing decisions of Council to be made (with or without conditions) by the Chief Executive Officer, who in turn can delegate to other staff where appropriate.

The existing delegations do not specifically deal with the disposal of residential property by lease. The purpose of the new delegation, which is attached to this report as Attachment 1, is to clarify that the CEO can dispose of residential property by lease. Adoption of the delegation will maintain administrative efficiency when dealing with leases of residential property.

Statutory Environment

Section 5.42 of the Local Government Act 1995 (LG Act) provides the Council with the ability to delegate powers and duties to its chief Executive Officer. Some powers and duties cannot be delegated in accordance with Section 5.43 of the Act, such as matters that require an Absolute Majority decision of Council. Council has the right to impose conditions on any delegation it grants.

Section 5.43(d) of the LG Act states that a local government cannot delegate to a CEO the power of acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of that paragraph.

Section 5.46 of the LG Act requires that all delegations be contained within a Register. The Local Government (Administration) Regulations 1996 require that where a decision has been made under delegated authority, records of that decision must be kept in accordance with the Regulations.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:
Not applicable.

Policy:
Not applicable.

Financial Implications

Not Applicable

External Stakeholder Consultation

Not Applicable

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. not accept the delegation; or
2. request further amendments are made to the delegation.

CONCLUSION

It is recommended that Council adopt the delegation as per the Recommendation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Amend Delegation of Authority Register to include new delegation	August 2023

10.3 Policy and Legislation Committee - 26/07/2023 - Review of the Policy and Legislation Committee

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Acting Director Finance and Corporate Services - Sarah Pierson
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
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 Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Policy and Legislation Committee Terms of Reference Proposed Edits [6.3.1 - 3 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council

- 1. notes the outcome of the evaluation of the Policy and Legislation Committee's (the Committee) effectiveness, in accordance with clause 8 of the Committee's Terms of Reference;**
- 2. acknowledge that while the Committee is operating effectively, increased information and training for members would further improve its effectiveness and requests the CEO consider how this can be actioned;**
- 3. Endorses the amendments proposed to the Committee's Terms of Reference as per Attachment 1.**

OFFICER RECOMMENDATION

That the Council

1. notes the outcome of the evaluation of the Policy and Legislation Committee's (the Committee) effectiveness, in accordance with clause 8 of the Committee's Terms of Reference;
2. acknowledge that while the Committee is operating effectively, increased information and training for members would further improve its effectiveness and requests the CEO consider how this can be actioned;
3. Endorses the amendments proposed to the Committee's Terms of Reference as per Attachment 1.

EXECUTIVE SUMMARY

Under its Terms of Reference, the Policy and Legislation Committee (the Committee), at a meeting prior to the ordinary Local Government Elections, shall undertake a review to evaluate its effectiveness. Committee Members and City officers have reviewed the effectiveness of the Committee and this report presents the outcomes of that review for the Committee's consideration.

STRATEGIC CONTEXT

Regular review of Committees and their functioning aids in good governance.

BACKGROUND

Following the 2021 Council elections, and in accordance with clause 2.2 of the City of Busselton Standing Orders Local Law 2018, Council resolved to (re-)establish the Committee and adopted its Terms of Reference (ToR), which states:

8. EVALUATION OF COMMITTEE'S EFFECTIVENESS

8.1. At the meeting of the Committee prior to the ordinary Council elections, the Committee shall undertake review to evaluate its effectiveness, and as a guide the following should be determined:

- a. are the Committee's purpose and objectives being met?*
- b. should the purpose and objectives be amended?*
- c. is the Committee functioning effectively and as per the requirements of the Act?*
- d. are the Committee members regularly attending meetings?*
- e. review the Terms of Reference, including membership.*

With Council elections to be held in October this year, officers initiated the review process.

OFFICER COMMENT

In order to facilitate the review a survey link was opened to the Committee and Deputy Committee Members of the Committee from Friday 18th April until Monday 1st May 2023. Each Member was asked to respond to the following questions and provide comments where appropriate or required:

- a. Do you feel the Committee's purpose and objectives are being met? – Yes / No / Partly.
- b. In your opinion, is the Committee functioning effectively? If no, how could this be improved?

In addition to the questions asked of Committee Members, City officers assessed the following questions through a review of attendance and minutes:

- a. Is the Committee functioning as per the functions of the Act?
- b. Are committee members' regularly attending meetings?

The table below sets out the collated responses:

Question	Collated Response
Do you feel the Committee's purpose and objectives are being met?	4 responses Yes 1 response No <ul style="list-style-type: none"> Concerns were raised about the need for free flowing and constructive discussion and that this can be hampered where members have not taken the time to consider and understand the subject.
In your opinion, is the Committee functioning effectively?	3 responses Yes 2 response Partly
If no, how could this be improved?	Ensure discussion remains strategic and doesn't stray into operational detail and that participation of members is improved through the chair.
Is the Committee functioning as per the functions of the Act?	Yes, the Committee has been established in accordance with the Act and meets all requirements of the Act
Are committee members' regularly attending meetings?	Yes

Based on the responses provided, it is recommended that the Committee is generally operating effectively.

The suggestions for improvement relate to the effective running of the meeting, noting this is a meeting at which more informal discussion does tend to take place.

Other Committee reviews have recommended additional training for members of the Committees and it is felt that this may also assist with respect to the functioning of this Committee. Officers therefore recommend this be carried through as a recommendation for the review of this Committee.

With respect to the ToR the following amendments are proposed (Attachment A):

- Amendment to point 3.4 to provide for appointment of new members at either the next ordinary or a special council meeting post the election. With changes to the election process (preferential voting) flexibility is required;
- Removal of the delegation to schedule and endorse dates, times and locations of meetings held by the Committee. Officers do not believe this requires a delegation.
- Amendment of point 8 evaluation of the committee's effectiveness to provide for one single Committee review report to be presented to Council as opposed to each Committee evaluating their own effectiveness. For many years officers have undertaken a review of the committees and their terms of reference (ToR) (along with working groups) and provided a report to Council with Council then determining which Committees are to continue and any changes to ToR's. This has worked efficiently and has provided Council with the opportunity to review their Committee structure. It is therefore recommended that this process be used;

- Replacement of 'shall' with 'will'.

Statutory Environment

The Policy and Legislation Committee has been established in accordance with section 5.8 of the *Local Government Act 1995*.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

Financial Implications

Not applicable.

External Stakeholder Consultation

In accordance with the Terms of Reference, the Committee and Deputy Committee Members of the Policy and Legislation Committee were consulted in undertaking the review into the Committee's effectiveness.

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 choose to evaluate the effectiveness of the Committee differently and / or make different of further amendments to the ToR.

CONCLUSION

An evaluation of the Committee's effectiveness is required under the Committee's ToR. This report presents an evaluation for the Committee's endorsement and recommendation to Council.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
Terms of Reference Updated	30 September 2023

10.4 Policy and Legislation Committee - 26/07/2023 – Rescission of Council Policy ‘Swearing in of Elected Members’

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Acting Director Finance and Corporate Services - Sarah Pierson
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
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 Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. swearing-in-of-elected-members [6.4.1 - 2 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council rescind Council Policy ‘Swearing in of Elected Members’ (Attachment 1), effective immediately.

OFFICER RECOMMENDATION

That the Council rescind Council Policy ‘Swearing in of Elected Members’ (Attachment 1), effective immediately.

EXECUTIVE SUMMARY

This report recommends the rescission of Council Policy ‘Swearing in of Elected Members’ (the Policy), with the Policy having been reviewed as part of the City’s periodic review of its Council policies. The matters set out in the Policy are largely requirements under the *Local Government Act 1995* (the Act); hence the recommendation for rescission.

STRATEGIC CONTEXT

Regular review of City’s policies reflects good governance.

BACKGROUND

The Policy was initially adopted in March 2010 and last reviewed in September 2019, where the title was changed from ‘Convening of the Council Following an Ordinary Election’ to ‘Swearing in of Elected Members’, and the Policy aligned to the City’s new (at that time) Policy Framework and policy template.

The purpose of the Policy is to outline guidelines for the official swearing in ceremony of newly elected members as part of a special Council meeting.

OFFICER COMMENT

Officers propose that the Policy be rescinded as the swearing in of elected members is a requirement under the Act, as is the election of the Mayor (statutorily now by popular vote) and Deputy Mayor.

Persons successfully elected or re-elected cannot participate in the transaction of business until they have made the Elected Member declaration, in accordance with Section 2.29 of the Act. The current policy stipulates that this will occur Monday following the election, however changes to the election process may require this to be later, in the event of the count not being concluded or a recount being required. In any event, it will occur at a special Council meeting at the earliest practicable opportunity following the election, as will the election of the Deputy Mayor.

While it is proposed that the election of members to Council Committees and working groups continues to occur at this first special Council meeting, removal of a policy provision does provide for increased flexibility and allows the CEO, in consultation with the council of the day, to make changes as appropriate to the circumstances at the time of each election.

Similarly, the holding of function for newly Elected Members and their immediate family members to mark the occasion can also be reviewed in the lead up to each election. Although it is certainly recommended that this practice be continued in recognition of the momentous achievement of being elected to serve the community.

Statutory Environment

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

A number of sections of the Act are relevant to the proposed policy, including:

- Section 2.29 which provides for the declaration of elected members before acting in the office;
- Section 5.8 of the Local Government Act 1995 provides for the establishment of committees; and
- Schedule 2.3, Division 1 of the Local Government Act 1995 provides for when and how mayors, presidents, deputy mayors and deputy presidents are elected by the Council.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:
Not applicable.

Policy:
Not applicable.

Financial Implications

Not Applicable

External Stakeholder Consultation

Not Applicable

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 decide to retain the Policy, in which case officers will further review and present amendments to the next Policy and Legislation Committee meeting.

CONCLUSION

This report recommends that Council Policy Swearing in of Elected Members is rescinded as part of the City's ongoing review of its policies, with the Policy provisions largely covered by the Act or being of an operational nature.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
Policy removed from the City's website	2 August 2023

10.5 Policy and Legislation Committee - 26/07/2023 – Review of Council Policy 'Fees, Allowances and Expenses for Elected Members'

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Acting Director Finance and Corporate Services - Sarah Pierson
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
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 Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Proposed Policy - Elected Member fees allowances and expenses for Elected Members [6.5.1 - 5 pages] 2. Current Policy - Fees, allowances and expenses for Elected Members [6.5.2 - 6 pages] 3. Track Changes Edits [6.5.3 - 7 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council adopts the amended Council Policy 'Elected Member Fees, Allowances and Expenses' (Attachment 1), to replace the current policy titled 'Fees, Allowances and Expenses for Elected Members' (Attachment 2), inclusive of Committee amendments so that the following points read as follows, with subsequent renumbering as required:

- 5.5 As per Section 5.99 of the Act, Elected Members will be paid an annual attendance fee in lieu of fees for attending meetings referred to in Section 5.98(1) of the Act. Elected Members will be paid an annual fee within the relevant band set out in the Determination, as set each year by Council through the adoption of its budget.
- 5.8 Any equipment provided in accordance with this policy must be returned to the City at the expiry of an Elected Members term. After having served a minimum of 24 months, an Elected Member may on retiring choose to keep the equipment, subject to it being cleared by the City's IT department.
- 5.18 Spouse/ partner attendance on City sanctioned activities must be approved by the Mayor and CEO and will be at the Elected Member's expense. *(new)*
- 5.19 The City will also meet the following expenses:
 - a. cost of laundry for Elected Member for greater than 5 nights;
 - b. reimbursement of taxi fares or other public transport where these directly relate to the activity and no other transport is provided;
 - c. reimbursement of a daily sustenance allowance per day, in accordance with the Public Service Award 1992;

d. specific conference / event related meals.

5.27 In addition to their entitlements as an Elected Member under this Policy, the Mayor is eligible for a Mayoral allowance in accordance with the Act. The Mayor will be paid an allowance within the relevant Band set out in the Determination, as set each year by Council through adoption of its budget. (previously 5.26)

Reasons: The Committee proposed amendments to the Policy to allow Council to determine the level of allowance paid to Elected Members each year through the budget. The Committee also sought to clarify conditions with equipment retention and spousal attendance at City sanctioned activities.

OFFICER RECOMMENDATION

That the Council adopts the amended Council Policy 'Elected Member Fees, Allowances and Expenses' (Attachment 1), to replace the current policy titled 'Fees, Allowances and Expenses for Elected Members' (Attachment 2).

EXECUTIVE SUMMARY

This report presents an amended Council Policy 'Elected Member Fees, Allowances and Expenses' (the Policy) (Attachment 1). The Policy has been reviewed as part of the City's ongoing policy review cycle and amended to reflect current provisions, with minor amendments and edits to improve readability.

STRATEGIC CONTEXT

The provision of fees, allowances and the reimbursement of expenses incurred while carrying out role functions ensures that elected members are appropriately remunerated for their work and aids in good governance. Regular review of policies also reflects good governance.

BACKGROUND

It is the function of the Policy and Legislation Committee to consider new and review existing Council policies. The City's Policy Framework sets out an ongoing cycle of policy review, with the aim of determining the ongoing strategic importance and applicability of Council policies.

The purpose of the Policy is to set out the fees, allowances, expense reimbursements and equipment that Elected Members are entitled to, such that they can effectively carry out their role. The Policy was last reviewed in its entirety in 2017, with further amendments made in 2018 in relation to childcare expenses for briefing sessions and workshops and travel reimbursements for 'flagship' events, and in 2019 in relation corporate attire provisions.

OFFICER COMMENT

The broad intention of the Policy is to provide a reimbursement framework which allows Elected Members to meet their commitments and effectively perform their role. Officers consider that the current policy achieves this intent, with the only substantive amendments proposed as follows:

1. The inclusion of a policy position with respect to Elected Member fees, ICT allowances and the Mayoral allowance, reflective of the current practice of remuneration being equal to the maximum payable under the relevant Salaries and Allowances Tribunal Determination (point 5.5, 5.9 and 5.26).
2. Amendment to the clause which covers the retention of City provided equipment to be more specific about what associated equipment is provided with a portable device and to ensure that any equipment retained by members is wiped prior to its retention, to protect City information and networks.
3. Clarity with respect to the making of accommodation and (where required) flight arrangements for an Elected Member required to travel overnight on City sanctioned activities; with the City to arrange these in the first instance (in consultation with the Elected Member), and reimbursement of reasonable costs to be provided in the event this is not possible. This reflects current practice.
4. A change from 2 nights to 5 nights for the payment of laundry costs when Elected Members are away on City sanctioned activities (point 5.18). Elected members generally only require laundry on longer trips.

Other minor amendments are recommended to improve the structure and readability of the Policy, for instance insertion of new point 5.3 in lieu of the same point being repeated under each subheading, and the combining of points within the travel expenses section to streamline the Policy content. It is recommended that the title be amended to provide for policies with respect to Elected Members to be grouped / located together in the City's policy listing.

Statutory Environment

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

Section 5.98(1) and 5.98(2A) of the Act entitles Council members to a fee for attending a council, committee or other prescribed meeting. Section 5.99 of the Act allows a local government to decide that instead of paying a fee referred to in Section 5.98(1), it will instead pay an annual fee determined by the Salaries and Allowances Tribunal Act 1975 or a fee set by the local government within the range for annual fees determined by the Salaries and Allowances Tribunal (SAT).

Section 5.98(5) entitles the mayor or president of a local government to be paid, in addition, an annual allowance determined for mayors or presidents or as set by the local government within the range determined by the SAT.

Section 5.98A allows a local government to pay the deputy mayor or deputy president an allowance, currently 25% as determined by the SAT.

Section 5.98(2)(b) of the Act and Regulation 32 of the *Local Government (Administration) Regulations 1996* provides that a Council member may be reimbursed for an expense of a kind prescribed where it has been approved by the local government and where it is incurred in performing a function in his or her capacity as a council member with the express authority of the local government. All reimbursements are to be in accordance with the determination made by the SAT.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:
Not applicable.

Policy:
Not applicable.

Financial Implications

Not Applicable.

External Stakeholder Consultation

Not Applicable.

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. Decide to retain the Policy in its current form.
2. Decide to make additional amendments.

CONCLUSION

This report recommends that Council adopt the amended Council policy ‘Elected Member Fees, Allowances and Expenses,’ to replace the current policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
Policy placed on the City’s website	2 August 2023

10.6 Policy and Legislation Committee – 26/07/2023 - Review of Council Policy 'Designation of Senior Employee and Acting CEO'

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Office of the Chief Executive Officer
Reporting Officer:	Chief Executive Officer - Tony Nottle
Authorised By:	Chief Executive Officer - 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 Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none">1. Proposed Council Policy [6.6.1 - 2 pages]2. Current Council Policy [6.6.2 - 2 pages]3. Tracked Changes Proposed Council Policy [6.6.3 - 2 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council:

- a) rescind the current Council Policy 'Designation of Senior Employees and Acting CEO' (Attachment 2), and
- b) request the CEO to bring a new Council Policy 'Acting CEO' to the Ordinary Council Meeting being held 16 August 2023.

Reasons: The Committee proposed a new policy should be drafted to reflect the new organisational structure and Acting CEO titles.

OFFICER RECOMMENDATION

That the Council adopts the amended Council Policy 'Designation of Senior Employees and Acting CEO' (Attachment 1), to replace the current policy (Attachment 2).

EXECUTIVE SUMMARY

This report presents an amended Council Policy 'Designation of Senior Employees and Acting CEO' (Attachment 1) (the Policy). The Policy has been reviewed as the result of a recent organisational review and realignment of structure, in addition to being due for review as part of the City's ongoing policy review cycle.

STRATEGIC CONTEXT

The Designation of Senior Employees, while optional, forms part of the City's overall governance arrangements and provides Council oversight for the appointment and termination of executive positions of the City. Policy provisions with respect to the appointment of an Acting CEO ensures that Section 5.36 of the Act is met, while allowing the CEO flexibility to appoint an Acting CEO for shorter periods of leave.

BACKGROUND

It is the role of the Council broadly to govern the local government's affairs; and be responsible for the performance of the local government's functions, through (predominantly) overseeing the allocation of the local government's finances and resources and determining the local government's policies.

Under Section 5.41 of the *Local Government Act 1995* (the Act), the role of the CEO is to manage the day-to-day operations of the local government and to be responsible for the employment, management supervision, direction and dismissal of other employees. This however is subject to Section 5.37 of the Act in relation to Senior Employees.

Section 5.37(1) of the the Act provides for a local government to designate employees or persons belonging to a class of employees to be Senior Employees. Section 5.37(2) of the Act requires the CEO to inform the Council of each proposal to employ or dismiss a Senior Employee. The Council has had a policy covering the designation of Senior Employees since at least 2015.

Further, Section 5.36 of the Act establishes that a person is not to be employed in the position of CEO unless the council believes that the person is suitably qualified for the position. While the CEO has responsibility under their contract of employment for all staffing matters, including the appointment of an Acting CEO for periods of leave, it was identified during a review of the City's governance system that the lack of a formal policy position was a gap in the City's policy framework.

In June 2018 the Council therefore adopted a policy covering both the designation of Senior Employees and the appointment of an Acting CEO. The current policy was adopted in 2019 with minor amendments to identify the importance of succession planning for the position of CEO.

OFFICER COMMENT

The CEO has recently completed an organisational review, resulting in a realignment of the organisation's structure and adjustments to two of the City's Senior Employee positions, with the previous Director Community and Commercial Position replaced by the Director Business and Economic and Development position, and the position of Director Finance and Corporate Services to be Director Corporate and Strategic Performance moving forward. The Policy has therefore been updated to make these new positions Senior Employees.

Council is asked to adopt the amended policy, continuing to provide for the appointment of persons employed as Senior Employees to be appointed as Acting Chief Executive Officer during periods of Leave by the Chief Executive Officer or by Council, such that the continuous and efficient execution of the City's functions is maintained.

Statutory Environment

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

As detailed in the background section of this report section 5.36 and 5.37 of the Act sets out requirements in relation to the appointment of a CEO and any designated Senior Employees.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

Not applicable.

Financial Implications

Not Applicable.

External Stakeholder Consultation

Not Applicable.

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. Decide not to designate any Senior Employees, noting it is optional under the Act;
2. Decide not to designate the new positions as Senior Employees, noting under the current structure of the Policy they would not be able to act as CEO;
3. Decide to make additional amendments to the policy

CONCLUSION

This report recommends that Council adopt the amended Council policy 'Elected Member Fees, Allowances and Expenses,' to replace the current policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
Policy placed on the City's website	2 August 2023

10.7 Policy and Legislation Committee – 26/07/2023 - Review of Council Policy 'Closed Circuit Television Systems'

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Finance and Corporate Services
Reporting Officer:	Manager Information Services - Tim Allingham
Authorised By:	Acting Director Finance and Corporate Services - Sarah Pierson
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 Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Proposed Council Policy Closed Circuit Television Systems [6.7.1 - 2 pages] 2. Current Council Policy Closed Circuit Television Systems [6.7.2 - 2 pages] 3. Track Changes Version [6.7.3 - 2 pages]

This item was considered by the Policy and Legislation Committee at its meeting on 26 July 2023, the recommendations of which have been included in this report.

COMMITTEE RECOMMENDATION

That the Council adopts the amended Council policy: Closed Circuit Television Systems (the Policy) (Attachment 1) to replace the current policy (Attachment 2).

OFFICER RECOMMENDATION

That the Council adopts the amended Council policy: Closed Circuit Television Systems (the Policy) (Attachment 1) to replace the current policy (Attachment 2).

EXECUTIVE SUMMARY

This report presents an amended Council policy: Closed Circuit Television Systems (the Policy) (Attachment 1). The Policy has been reviewed as part of the City’s ongoing policy review cycle. Officers recommend it replace the current policy (Attachment 2).

STRATEGIC CONTEXT

The City’s use of CCTV footage helps to facilitate a safe community and to the protection of City assets. Regular review of City policies reflects good governance.

BACKGROUND

It is the function of the Policy and Legislation Committee to consider new and review existing Council policies. The City's Policy Framework sets out an ongoing cycle of policy review, with the aim of determining the ongoing strategic importance and applicability of Council policies.

A policy in relation to Closed Circuit Television Systems was first implemented in October 2013, with a further review in June 2018.

OFFICER COMMENT

The Policy has been reviewed and is considered of ongoing relevance and strategic importance.

It has been updated with wording simplifications, and the following:

- Moved the clarification as to why the City uses CCTV systems from the scope section to the policy statement section.

The reason why the City uses CCTV is not relevant to the scope of the policy, however this information is important to the overall meaning of the policy and therefore needs to be included.

- Removed the categorisation of locations.

Categorisation of the locations of CCTV cameras is not used operationally. The Surveillance Devices Act 1998, referenced in section 6, specifies that CCTV cameras may not be used to record private activities. All the City's CCTV cameras are located in public areas or City staff areas. This complies with this act.

6.Regulation of use, installation and maintenance of optical surveillance devices

- (1) Subject to subsections (2) and (3), a person shall not install, use, or maintain, or cause to be installed, used, or maintained, an optical surveillance device —
- (a) to record visually or observe a private activity to which that person is not a party; or
 - (b) to record visually a private activity to which that person is a party.

- The City's CCTV systems will be added to Cam-Map WA (operated by the WA Police Force).

This system provides the local Police with an overview of the locations of all registered CCTV cameras to help them gather evidence and solve crimes. It does not provide access to any footage on the CCTV cameras or systems themselves.

The information on Cam-Map WA is not available to the public.

- Clarification that, in addition to footage being available to the Police, the CEO can authorise the release of footage.

There may be instances where the release of CCTV footage may be appropriate even though the Police have not requested it. In these cases, the CEO may authorise the release.

- Recorded data will be managed according to the City's Recordkeeping Plan and State Records Act.

Retention of footage of incidents (100.2) is to be retained for 7 years (and then it becomes eligible for destruction).

Retention of normal footage (100.5) is required for 31 days – our systems currently provide around 45 days.

Statutory Environment

In accordance with section 2.7(2)(b) of the Local Government Act 1995 (the Act), it is the role of the Council to determine the local government policies. The Council does this on recommendation of a Committee it has established in accordance with section 5.8 of the Act.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Community Development Plan 2022-2027

Policy:

[Closed Circuit Television Systems](#)

Financial Implications

Not Applicable

External Stakeholder Consultation

Not Applicable

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. Choose not to adopt the amended Policy, or
2. Adopt the Policy with further amendments.

CONCLUSION

Officers are recommending the adoption of the amended Council policy: Closed Circuit Television Systems, to replace the current policy of the same name.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Milestone	Completion Date
Policy taking effect	Immediately
Policy placed on City's website	Within 7 days

10.8. Finance Committee - 09/08/2023 - List of Payments Made - June 2023

Report Placeholder – Supplementary Agenda to be published week commencing 7 August 2023

10.9. Finance Committee - 09/08/2023 - Financial Activity Statements - Year to Date 30 June 2023

Report Placeholder – Supplementary Agenda to be published week commencing 7 August 2023

10.10. Finance Committee - 09/08/2023 - Rate Exemption - Lamp Inc.

Report Placeholder – Supplementary Agenda to be published week commencing 7 August 2023

11. PLANNING AND DEVELOPMENT SERVICES REPORTS

11.1. Amendment 54 to Local Planning Scheme 21 Lot 2883 Puzey Road, Wilyabrup

Strategic Theme:	Key Theme 2: Lifestyle 2.8 Plan for and facilitate the development of neighbourhoods that are functional, green and provide for diverse and affordable housing choices.
Directorate:	Planning and Development Services
Reporting Officer:	Strategic Planning Coordinator – David Sands
Authorised By:	A/Director Planning and Development Services – Rachel Runco
Nature of Decision:	Legislative: adoption of “legislative documents” such as local laws, local planning schemes and local planning policies.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Aerial Photograph [11.1.1 - 1 page] 2. Scheme Amendment Map [11.1.2 - 1 page] 3. Amendment report [11.1.3 - 18 pages] 4. Strata Plan 54626 with notation [11.1.4 - 1 page] 5. Amendment 54 Schedule of Submissions [11.1.5 - 2 pages]

OFFICER RECOMMENDATION

That the Council:

1. In pursuance of the Planning and Development Act (Local Planning Schemes) Regulations 2015 (the Regulations) adopts Amendment 54 to the City of Busselton Local Planning Scheme 21 (the Scheme) for final approval, for the purposes of:

- a) Inserting a new ‘Special Provision Area 76’ as follows:

No.	Particulars of Land	Zone	Special Provisions
SP76	Strata Lots 20, 21, 31, 37, 46 and 47 on Survey- Strata Plan 54626 (Lot 2883) Puzey Road, Wilyabrup	Viticulture and Tourism	For Lots 20, 21, 31, 37, 46 and 47, as shown on the current Strata Plan 54626 (approved on 24 December 2021), one Chalet per lot is permitted as unrestricted length of stay.

- b) Amending the Scheme Map accordingly.

2. In accordance with Regulation 35 (2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 54 of the City of Busselton Local Planning Scheme No. 21 is a ‘complex amendment’ in accordance with r.34 of the Regulations as it is:

- (a) an amendment that is not consistent with a Local Planning Strategy for the Scheme that has been endorsed by the Commission.

- 3. Pursuant to r. 53 of the Regulations, endorses the Schedule of Submissions at Attachment 5, which has been prepared in response to the public consultation process.**
- 4. Upon preparation of the necessary documentation, refers the adopted Amendment 54 to the WAPC for consideration and determination in accordance with the Planning and Development Act 2005.**
- 5. Pursuant to r. 56 of the Regulations, should directions be given that modifications to Amendment 54 are required, direct these modifications to be undertaken accordingly, on behalf of the Council, unless they are considered by officers to significantly affect the purpose and intent of the Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination**

EXECUTIVE SUMMARY

Council adopted Amendment 54 (the Amendment) to Local Planning Scheme No. 21 (the Scheme) for advertising on the 21 December 2022 and the Western Australian Planning Commission (WAPC) required administrative modifications prior to advertising as the amendment was classified as 'Complex'.

The Amendment would allow land use planning controls relating to specific strata Lots 20, 21, 31, 37, 46 and 47 on Survey-Strata Plan 54626 (previously Loc 2883) Puzey Road, Wilyabrup (Attachment 1 – Aerial Photograph). The Amendment proposes to insert a new 'Special Provision' within the Scheme to allow certain lots to have buildings with 'unrestricted length of stay'. (Attachment 2 – Scheme Amendment map).

It is recommended that the Amendment be finally adopted without modification and forwarded to the Western Australian Planning Commission for assessment and referral to the Minister for Planning for final consideration.

STRATEGIC CONTEXT

Adoption of the Amendment would align with Strategic Theme 2.8 and will assist in delivering additional long term housing stock whilst balancing the need to ensure delivery of tourism product. The Amendment is considered consistent with the City's overall land use strategy detailed within the Local Planning Strategy (LPS) and the Local Tourism Planning Strategy (LTPS).

BACKGROUND

The Amendment relates to the subject land which comprises of Strata Plan 54626 previously referred to as Loc 2883 Puzey Road, Wilyabrup and is in the "Viticulture and Tourism" zone of Local Planning Scheme No.21 (LPS 21) (Attachment 3 - Amendment Report No. 54), (Attachment 4 - Strata Plan 54626).

The surrounding properties are predominately used for agriculture purposes (mainly viticulture) or rural industries including brewery and restaurant uses. Tourism land uses are also throughout the area, predominately short stay chalets. Bootleg Brewery is located to the south on the opposite side of Johnson Road.

The subject land is flat, triangular, and bounded by Puzey Road to the south-east. The southern edge of the subject land is located at the intersection of Johnston, Puzey and Wildberry Roads. There has

been a previous development approval for Chalets granted in 2006 by the City and a Survey-Strata Subdivision was applied for in 2007. While survey strata lots and common property accessway were created the development approval for Chalets was never implemented.

The Western Australian Planning Commission (WAPC) approved a strata subdivision on 1 September 2020 for the subject land, based on a revised development concept and strata management statement (for Strata 54626) which included long stay restriction as well as commercial and agricultural land use (refer Attachment 4). The strata management statement set out the following strata management rights for each Strata lot:

- an agricultural enterprise as the primary use for Lots 16 and 17 and a short stay tourist resort facility;
- A manager residence on Lot 1, 16 or 17; and
- A tourist commercial venture to be operated on Lots 20 and 21.

The strata management statement specifically refers to specific rights for lots 20, 21, 31, 37, 46 and 47, and are summarised as follows:

- Short stay tourist accommodation, as a right, on all lots;
- Lot 20 and 21 to have additional rights for commercial use, and to be designated to allow a residential dwelling rights for occupation all year round;
- Lots 46 and 47 to have additional rights for agricultural enterprise use and to be designated to allow for a residential dwelling rights for occupation all year round;
- Lot 46 and 47 to have the right for short stay accommodation and agricultural use;
- Lot 37 to have the right for short stay accommodation and residential use, and in addition specifies that the lot will contain buildings and infrastructure for residential use with unrestricted length of stay;
- All lots except 20,21,31,37,46 and 47 to have restriction on use of short stay accommodation only; and
- In addition to the above, Lots 31, 46 or 47, may be designated for use by a resident manager.

The amendment has been lodged by the proponent to formalise the above strata management rights for each strata lot into Local Planning Scheme No.21.

OFFICER COMMENT

The amendment would insert Special Provisions within LPS 21 to allow for “unrestricted length of stay” consistent with various strata management rights prescribed under Strata 54626. The key consideration with this amendment is that the location of tourism lots with “unrestricted length of stay” have not been identified by the City’s strategic planning framework (LPS or LTPS). The amendment will however grant discrete long-stay accommodation privileges to facilitate the proponent progressing full development of the site. No issues were raised during the advertising period and the Environmental Protection Authority did not assess the amendment and provided no advice.

Unrestricted Length of Stay

Strata Plan 54626 allows "unrestricted length of stay" for Lots 20, 21, 31, 37, 46, and 47. Officers agree this is an acceptable use for all lots, with the exception of Lot 31, however as the proposed use of Lot 31 will be for a resident manager for the remaining short stay lots, the City accepts that granting of "unrestricted length of stay" for this lot is appropriate.

The development of a "Chalet" which is a "D" use under LPS 21 is considered the appropriate uses for the short and extended stay for the "Viticulture and Tourism" zone. Within the strata management statement, the reference to residential dwellings is noted, however it is not considered appropriate to support "Grouped Dwelling" or "Holiday Home (grouped dwelling)" through this amendment, as this would require an additional use to be introduced. This is not considered an appropriate location as it would result in a quasi-suburban style development within a rural setting with further allowances for ancillary dwellings being possible. This amendment will not result in modification to the classification of Grouped Dwelling and Holiday Home (grouped dwelling) which will remain an "x" use they are currently for the "Viticulture and Tourism" and surrounding "Rural" zone within LPS 21.

Finally, it is concluded that the amount of development on lots 20, 21, 31, 37, 46 and 47 can be controlled through the proposed scheme amendment text, as amended by officers, which specifically refers to "one Chalet per lot".

Manager Residence

The City's position is maintained that one manager residence is appropriate for the site. As three lots (31, 46 and 47) are given the strata management right to be a manager residence and are located on separate privately owned lots it will be difficult for the City to control how many managers are operating at the site, however, the differentiation between tenants and managers is ultimately an issue for the Strata Body to coordinate with future land use. In addition, the proposed amended text refers specifically to "one Chalet" for the strata lots (20, 21, 31, 37, 46 and 47) and therefore further control of management residences in this regard are considered redundant.

Statutory Environment

The key statutory documents relevant to this proposal include the Planning and Development Act 2005, the Planning and Development (Local Planning Schemes) Regulations 2015, and the relevant objectives and provisions of the City of Busselton Local Planning Scheme No. 21. Each is discussed below under appropriate subheadings.

Planning and Development Act 2005

The *Planning and Development Act 2005* outlines the relevant considerations when preparing and amending local planning schemes. The relevant provisions of the Act have been taken into account in preparing and processing this Amendment.

Planning and Development (Local Planning Schemes) Regulations 2015

The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), which came into operational effect on 19 October 2015, identify three different levels of amendments – basic, standard and complex. The resolution of the local government is to specify the level of the

amendment and provide an explanation justifying this choice. This Amendment is considered to be a 'complex' amendment.

Local Planning Scheme No. 21

The subject land is zoned 'Viticulture and Tourism' and the objectives of this zone are as follows:

- a. To provide for the maintenance or enhancement of specific local rural character.
- b. To provide for development and expansion of the viticultural, winemaking and associated industries, in addition to general rural pursuits, in a manner that does not cause adverse environmental impact.
- c. To facilitate the development of tourist facilities of a scale and nature appropriate in rural settings without prejudice to the scenic quality of land within this zone and without creating or increasing ribbon development on any road.
- d. To provide for the operation and development of existing, future and potential rural land uses by limiting the introduction of sensitive land uses.
- e. To provide for a range of non-rural land uses where they have demonstrated benefit and are compatible with surrounding rural uses.
- f. To maintain and enhance the environmental qualities of the landscape, vegetation, soils and waterways.

Relevant Plans and Policies

Local Planning Strategy

The City's Local Planning Strategy 2019, (LPS) provides guidance on the consideration of unrestricted length of stay to support re-investment and updating of accommodation product and appropriate for new developments on Tourism zoned within the Busselton-Vasse Urban Area and the Dunsborough Urban Area. The LPS does not support 'unrestricted length of stay' in rural areas and states that strata title subdivision of tourism accommodation is not supported outside of the Busselton-Vasse Urban Area and the Dunsborough Urban Area.

City of Busselton Local Tourism Planning Strategy 2011

The Local Tourism Planning Strategy (LTPS) provides the long-term strategic land use planning and strategic direction for tourism development within the City of Busselton. Strategic tourism sites and precincts were identified as being of tourist significance or importance with the intention being to retain these sites for tourism use. Non-strategic tourism sites are also identified and are to be retained for tourism purposes with the possibility of an unrestricted length of stay component. The LTPS also considers areas of tourist zoned land where alternative zonings may be considered. The subject land is not included in any of the three categories under the LTPS.

State Planning Policy 3.7: Planning in Bushfire Prone Areas

The intent of SPP 3.7 is to implement effective, risk-based land use planning and development to preserve life and reduce the impact of bushfire on property and infrastructure. SPP 3.7 directs how land use should address bushfire risk management and applies to all land which has been designated as bushfire prone by the Office of Bushfire Risk Management.

The subject land has been designated as a Bushfire Prone Area and the considerations of SPP 3.7 were considered through the subdivision process through the preparation of a Bushfire Management Plan and implementation of subdivision conditions. In addition, the development application process will require a bushfire assessment to be undertaken of habitable buildings.

Further bushfire risk assessment for the Amendment is not considered necessary and the provisions of SPP 3.7 and associated guidelines have not been applied to this proposal.

Financial Implications

Not Applicable

External Stakeholder Consultation

The Amendment was advertised for 60 days, 15 May to 14 July. There were no public submissions, and three government agency submissions were received. There were no substantive matters raised with full details of the submissions received contained in the Schedule of Submissions provided at Attachment 5.

Risk Assessment

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 not adopt the Amendment for final approval and provide a reason for such a decision. It should be noted that under the relevant legislation there is no right of appeal against a council decision not to adopt an amendment for final approval; or
2. To seek further information before making a decision.

The Officer assessment has not revealed any substantive issue or reasonable grounds that would support either of the above options.

CONCLUSION

The Amendment provides for a small number of long-stay permissions associated with the Chalet land use for a survey strata development on the subject land which has already been provided approval by the WAPC and implemented through the subdivision process to create land title.

It is therefore recommended the Council provides a recommendation to the Western Australian Planning Commission to support the proposed Amendment.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Referral of Amendment 54 to the WAPC	Within one month of Council decision.

11.2. Proposed Amendment 56 to Local Planning Scheme 21 Special Character Area

Strategic Theme:	Key Theme 2: Lifestyle 2.8 Plan for and facilitate the development of neighbourhoods that are functional, green and provide for diverse and affordable housing choices.
Directorate:	Planning and Development Services
Reporting Officer:	Strategic Planning Officer - Justin Biggar
Authorised By:	Director Planning and Development Services - Paul Needham
Nature of Decision:	Legislative: adoption of "legislative documents" such as local laws, local planning schemes and local planning policies.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Attachment A - Pennock vs City of Busselton Decision [11.2.1 - 11 pages] 2. Attachment B - Examples of Affected Properties [11.2.2 - 2 pages]

OFFICER RECOMMENDATION

That the Council:

1. In pursuance of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) initiates Amendment 56 to the City of Busselton Local Planning Scheme No. 21 (the Scheme) for community consultation for the purposes of amending clause 5.7.3 to read as follows:

5.7.3 Where such objectives, provisions and/or controls are specified in Schedule 4 in relation to a designated Special Character Area, those objectives, provisions and/or controls act in conjunction with the other provisions of this Scheme relevant to that area.
2. Pursuant to r.35(2) determine that Amendment 56 is a 'standard amendment' as it is:
 - (a) An amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;
 - (b) An amendment that does not result in any significant environmental, social, economic or governance impacts on land in the Scheme area; and
 - (c) Any other amendment that is not a complex or basic amendment.
3. That as the amendment is in the opinion of Council, consistent with Part V of the *Planning and Development Act 2005* (the Act) and the Regulations made pursuant to the Act, that upon preparation of the necessary documentation, refer the amendment to the Environmental Protection Authority (EPA) and upon receipt of a response that the amendment is not subject to formal environmental assessment, advertise the proposal for a period of 42 days. Where the EPA determines the amendment is to be subject to formal environmental assessment, the assessment is to be prepared prior to advertising of the draft amendment.
4. Council note that the City will proceed with the following further stages for review of the Special Character Areas:

- (a) Undertake a broader review of the Special Character Area framework which includes the related Scheme provisions and suite of local planning policies.
- (b) As part of the review, the City will engage with the community to inform the preparation of revised planning controls consistent with the contemporary planning framework.
- (c) Incorporate the findings of the stage 2 review within the planning framework.

EXECUTIVE SUMMARY

As requested by Council at a briefing session on Special Character Areas 5 April 2023, City staff have forwarded for consideration Scheme Amendment 56. The proposed amendment seeks to reinstate discretion to vary development standards for Special Character Areas as identified in Schedule 4 of Local Planning Scheme No. 21 (the Scheme).

As a result of a Supreme Court decision (*Pennock v City of Busselton [2021] WASC 29*), the City has been unable to exercise discretion in the determination of applications where a variation to Schedule 4 is proposed. Prior to that decision, the City had long been of the view and practice that discretion did exist. The current lack of discretion is having significant implications for landowners wishing to develop their properties and preventing the exercise of reasonable planning judgement, and in some instances creating significant uncertainty.

As discussed in greater detail below, discretionary decision making is a core component of the planning system that allows local government to appropriately balance certainty with flexibility by providing scope to address the individual merits of each planning application. In the interests of re-introducing discretion into the planning framework for Special Character Areas, the amendment is recommended to be adopted for the purposes of public advertising.

STRATEGIC CONTEXT

In allowing the City to exercise discretion where appropriate, adoption of the proposed amendment aligns with Strategic Theme 2.8 and will facilitate functional redevelopment in the affected areas.

BACKGROUND

The Scheme identifies five Special Character Areas, being Quindalup, Yallingup, Old Dunsborough, Adelaide Street and Eagle Bay. Clauses 5.7.1 – 5.7.3 operate in conjunction with Schedule 4 and the applicable local planning policies to establish baseline development standards that vary those that would otherwise apply given the applicable zoning. The standards commonly include controls on building height, setbacks and subdivision potential.

Originally, Special Character Areas were created through the various local planning policies attaching to each locality. Later, due to a desire to include these development standards in a higher order planning instrument, they were incorporated into the Scheme when District Town Planning Scheme No. 20 was gazetted. However, it was not intended that the provisions would operate as standards which were incapable of variation. This is evidenced by the City's application of the Schedule 4 controls from the period since the inclusion of Special Character Area provisions into the Scheme up until the *Pennock* decision – a period of approximately 20 years.

In 2018, the City granted development approval for a single house in the Yallingup Special Character Area with a portion of the roof at a height of 10.61m, varying the 10m building height requirement as contained in Schedule 4. Having considered the merits of the application, discretion was applied as per cl 4.5.1 of the Scheme which provides a 'global discretion' to vary the standards prescribed by the Scheme. The owners of a neighbouring property then sought judicial review of the City's decision in the Supreme Court. The application for judicial review was dismissed on the basis that it was 'out of time,' with Allanson J noting the City was reasonable in its exercise of discretion (see Attachment A).

However, commentary regarding whether the City had discretion to approve a building over 10m has consequences for the City given the comments made by Allanson J concerning the City's construction of the Scheme. In his opinion, Allanson J noted that while the City's construction was open and reasonable, it was not one with which he agreed. The bolded sentence in the quote below has the effect of overriding all clauses of the Scheme, including cl 4.5.1, which was considered to permit the exercise of discretion within Special Character Areas.

*"5.7.3 Where such objectives, provisions and/or controls are specified in Schedule 4 in relation to a designated Special Character Area, those objectives, provisions and/or controls act in conjunction with the other provisions of this Scheme relevant to that area **with the exception that the provisions of Schedule 4 will take precedence over any other provisions of this Scheme.**"*

Accordingly, to reinstate discretion the amendment proposes to remove the wording in bold as contained above. Once removed, cl 4.5.1 (i.e. – application of discretion) would again apply when determining applications within a Special Character Area.

It is noted the proposed amendment does not alter the development standards applicable to each Special Character Area. In the assessment of any application, the development controls specific to each Special Character Area as contained in Schedule 4 and relevant policies will still take precedence over more general provisions contained elsewhere in the Scheme.

If the officer recommendation is supported, the process will need to be followed through to completion – being either the adoption or refusal of the amendment by the Minister for Planning. That is, once initiated by Council for advertising, the final determination on the amendment will be the decision of the Minister, not Council.

The proposed amendment is intended to form the first stage of a broader review of the Special Character Areas, the associated Scheme provisions and local planning policies. The amendment is intended to operate as an initial remedy to address the issue raised by the *Pennock* decision with the broader review to occur concurrently with the local planning scheme review process.

OFFICER COMMENT

The below section outlines the key considerations and circumstances that have informed the Officer Recommendation. First, the background discussions that have taken place since the formulation of the amendment, second, the importance of discretionary decision making to a modern planning framework is outlined, with a further discussion of the operational impacts of the loss of discretion. The third part provides comment on proposed changes to the use of discretion in the planning framework while the final section outlines the rationale for a broader review of the Special Character Areas which is recommended to occur concurrently with the preparation of the new Scheme.

Background Consultation

Initiation of Amendment 56 was considered by the Council at its meeting of 21 June 2023 however the matter was deferred to 16 August to allow affected residents additional time to provide input. During this time, further meetings were held between the CEO, Mayor and the respective resident groups and an external planning consultant report provided that offered an alternative perspective on interpretation of the Scheme, the Special Character Area framework and the future application of discretionary decision making.

While the officer recommendation remains unchanged, the consultant report prepared on behalf of residents has been considered and is reflected in a revised report that seeks to address the issues raised, particularly regarding the future application of discretion within the planning system.

Discretionary decision making

The intent of the Schedule 4 provisions is to protect the character of each identified Special Character Area through a number of conservative development controls, including such elements as building height and setbacks. As with any development standard within a Residential area, it is not considered these controls were intended to be absolute but to be subject to discretionary decision making, as demonstrated by the past application of discretion by City officers and Council.

Discretionary decision making is at the core of good planning practice and rightly allows for individual contexts to be taken into consideration. For example, a development site may have constraints related to lot shape, easements or bush fire risk. In this instance, absolute controls can prohibit otherwise acceptable development that satisfies the outcome the control is intended to achieve. It is important that development controls be treated as a mechanism to achieve a desired outcome and not be conflated or confused with the outcome itself.

As the local planning framework currently applies following the *Pennock* decision, landowners with development plans that propose any type of variation, no matter how minor, have been advised not to lodge their application as the City cannot legally exercise discretion. While a 'wait and see' approach was originally adopted, it has become clear that reasonable development proposals are unable to be supported.

There are numerous examples of development (either as pre-application enquiries or development applications) impacted by the loss of discretion, resulting in either costly redesigns, applications being cancelled or put on hold, or simply not lodged, until such time as the planning framework is modified (see Attachment B). Further, the ambiguity in the drafting of Schedule 4 provisions and inconsistency with modern planning terminology has led to considerable uncertainty in what can and cannot be approved by City staff. The current situation creates additional workload, contributes to lengthy delays and the perception of unnecessary bureaucracy.

It was initially intended to leave cl 5.7.3 unchanged and address the discretion issue through the preparation of Local Planning Scheme No. 22. In drafting the new scheme, the City is required to adopt the wording and format of the 'Model provisions for local planning schemes,' as set out in the Regulations. The consistent advice received from the Department of Planning, Lands and Heritage (DPLH) throughout the drafting process is that clause 32 of the Model provisions ('Additional site and development requirements') is one appropriate mechanism to control development outcomes in Special Character Areas. It is important to note that clause 32 standards can be varied. An alternative would be via local planning policy wherein discretion would also exist.

That is, if the Special Character Areas are included in the clause 32 schedule, as has been advised by the DPLH is the most suitable option, the City will have discretion to vary standards where appropriate. While it is open to Council to delay reinstatement of discretion until gazettal of the new Scheme, it is considered the length and uncertainty of time frame in finalising the new planning scheme (two plus years) is detrimental to landowners entitled to have their applications assessed and determined in a timely manner consistent with previous applications.

Accordingly, it is considered important to reintroduce discretion for the effective day to day operation of the planning framework and for the current Scheme to best reflect accepted modern planning practice as established by the Regulations.

Proposed Changes to the Regulations – Use and Application of Discretion

The Action Plan for Planning Reform, released by the Minister in 2019 incorporates various actions aimed at improving planning processes and outcomes. A review of the use and application of discretion forms one of these actions.

A recommendation contained in the review were for the Regulations to provide for the *“localised limitation of discretionary powers in specific scenarios or locations through the inclusion of appendices/schedules in the Model Provisions”*. In simple terms, the recommendation contemplates specific areas where planning controls would be ‘set’ by scheme provisions and would be unable to be varied – essentially the situation as it exists now under the City of Busselton scheme for Special Character Areas, post-Pennock.

It is unclear when or whether this reform work may be concluded and how it may relate to the Special Character Area. It is clear, however, that the general direction of the Government is to consolidate and make local planning schemes more consistent, and inflexible development controls in residential areas would be generally inconsistent with the state planning direction.

Broader review of the Special Character Area

It is intended for a broader review of the Special Character Areas to occur concurrently with the preparation of Local Planning Scheme No 22. The review is anticipated towards the end of the year and to be addressed in the following stages:

1. Undertake a broader review of the Special Character Area framework which includes the related Scheme provisions and suite of local planning policies.
2. As part of the review, engage with the community to inform the preparation of revised planning controls consistent with the contemporary planning framework.
3. Incorporate the findings of the stage 2 review within the planning framework.

The review is an important step having regard to the layering of planning controls that has occurred over time since the introduction of the Special Character Areas. For example, Eagle Bay contains several statutory documents (structure plan, local planning policy and Scheme requirements) each inconsistent with the other. This creates a level of uncertainty and confusion for both City staff and the community in the expected design requirements for the area.

Through the review process, the City will be able to engage with affected residents to formulate a new suite of Scheme and policy requirements and establish appropriate parameters to guide the application of discretion where any variations are proposed.

Statutory Environment

The key statutory documents relevant to this proposal include the *Planning and Development Act 2005*, the *Planning and Development (Local Planning Schemes) Regulations 2015* and the relevant objectives and provisions of the City of Busselton Local Planning Scheme No. 21. Each is discussed below under appropriate subheadings.

Planning and Development Act 2005

The *Planning and Development Act 2005* (P&D Act) outlines the relevant considerations when preparing and amending local planning schemes and will inform the preparation of the new planning scheme. The relevant provisions of the Act have been taken into consideration in preparing and processing this Amendment.

Planning and Development (Local Planning Schemes) Regulations 2015

The *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), which came into operational effect on 19 October 2015, identify three different levels of amendments – basic, standard and complex. The resolution of the local government is to specify the level of the amendment and provide an explanation justifying this choice. This Amendment is considered to be a ‘standard’ amendment for reasons outlined in the recommended council resolution.

Local Planning Scheme No. 21

As discussed in the Officer Comment section, due to the recent *Pennock* decision, a Scheme amendment is required to reintroduce discretion for the determination of applications within the Special Character Areas. It is noted a new scheme is currently being drafted as directed by the WAPC with LPS22 to be gazetted in 2025 based on the current time frame estimate. While the proposed amendment will provide a quick remedy to the *Pennock* decision outcome, the wider review to be undertaken concurrently with the Scheme review will offer opportunity to revisit the and revise the controls applied to the Special Character Areas.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

- State Planning Policy 3.7 Planning in Bushfire Prone Areas
- State Planning Policy 7.3 Residential Design Codes Volume 1 (2023)
- Council Policy Partial Moratorium on Scheme Amendments
- [City of Busselton Local Planning Strategy 2019](#)

State Planning Policy 3.7: Planning in Bushfire Prone Areas (SPP 3.7) and Guidelines for Planning in Bushfire Prone Areas

SPP 3.7 directs how land use should address bushfire risk management in Western Australia. It applies to all land which has been designated as ‘bush fire prone’ by the Fire and Emergency Services Commissioner as highlighted on the ‘Map of Bush Fire Prone Areas.’ The accompanying Guidelines for Planning in Bushfire Prone Areas provide supporting information to assist in the interpretation of

the objectives and policy measures outlined in SPP 3.7, providing advice on how bushfire risk is to be addressed when planning, designing or assessing a planning proposal within a designated bushfire prone area.

The portions of land that form the Special Character Areas predominantly fall within the bushfire prone area mapping. The ongoing review of the Special Character Areas and related suite of policy documents will need to take into consideration bush fire risk during their formulation.

State Planning Policy 7.3 Residential Design Codes Volume 1 (2023)

The latest version of SPP 7.3, applicable from September 2023, provides design parameters for low and medium density residential development and builds upon the principles established in State Planning Policy 7.0 Design of the Built Environment. These policies continue the shift away from prescriptive controls and allow development to be assessed against performance criteria where required. The intent of the updated framework is to provide flexible design-centric policy settings that incentivise functional, sustainable and contextual dwelling design. The ability for local government to exercise discretion in assessing applications is a key element in the successful implementation of the policy.

Partial Moratorium on Scheme Amendments

Council recently adopted the aforementioned policy establishing a moratorium on scheme amendments to ensure no substantive changes to the planning framework could occur that would potentially impact formulation of the new scheme. The policy sets out the limited range of circumstances in which 'standard amendments' would be permitted, including whether it is urgent from an operational standpoint and does not adversely affect the progression of the draft Local Planning Scheme No. 22.

Amendment 56 is considered to satisfy the criteria outlined in the policy for when a standard amendment can be progressed. Noting the lengthy time frame for the adoption of the new scheme (approximately 2025), it is considered leaving clause 5.7.3 unaltered would impact the effective operation of the planning framework and result in a local planning scheme that does not meet the expectation of a modern planning document.

Local Planning Strategy (LPS)

The LPS sets the broad planning direction for the City of Busselton and provides the strategic rationale for decisions related to the progressive review and amendment of LPS21 and the current formulation of LPS22. The broader review of the Special Character Areas to be undertaken as stage 2 should ensure consistency with the LPS, particularly Theme 1, Objective C and Theme 4, Objective C, as per below:

- Theme 1, Objective C – *“The creation of compact, liveable and sustainable settlements that provide their residents with housing and lifestyle choice and affordability, a high quality of life, health and wellbeing and convenient access to high quality employment and services.”*
- Theme 4, Objective C – *“Preserve and enhance the natural, rural and urban landscapes of the District.”*

Financial Implications

There are no direct financial implications associated with the officer recommendation.

External Stakeholder Consultation

Initial consultation was undertaken with residents of the respective Special Characters Areas, both in person and via email correspondence throughout 2023 and prior.

On 1 February 2023, the respective resident groups were advised the scheme amendment would probably not be pursued with the issue of discretion to be addressed through the preparation of Scheme No. 22. Due to a request from Council for the amendment to be prepared, the original position subsequently changed and was conveyed to the key residents' groups during a meeting of April 24. The timing of the amendment (i.e., 21 June meeting) was further advised to residents' groups via email correspondence on 1 June 2023.

At the meeting of 21 June, Council resolved to defer the matter to the meeting of 16 August to allow additional time for resident groups to formulate a response to the proposed amendment prior to final decision. If Council resolves to initiate the Amendment, the relevant documentation will be referred to the EPA for formal assessment under Part IV of the *Environmental Protection Act 1986*. Where the EPA resolves that the Amendment does not require formal assessment, the document will be advertised for 42 days in accordance with clause 47 of the Regulations.

The wider review of the Special Character Areas will necessitate targeted consultation and workshops with affected landowners to formulate planning documents to guide development and achieve the desired outcome for each area.

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 decline the request to initiate the Amendment in its entirety, provide a reason for such a decision and note the City will proceed with a review of the Special Character Area framework by engaging with the community to inform the preparation of revised planning controls and suite of local planning policies; or
2. Resolve to seek further information before making a decision; or
3. Resolve to initiate the Amendment subject to modifications.

CONCLUSION

Officers consider the proposal reflects contemporary planning practice and consistency with the objectives of the planning framework and therefore recommended Amendment 56 be initiated for public consultation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in stages as per the following table:

Milestone	Completion Date
Commencement the advertising process as per the requirements of the Regulations	Within 28 days of Council Decision
Broader review of Special Character Areas provisions	concurrently with the overall Scheme review process

11.3. Proposed Abbey South Structure Plan and Associated Amendment No. 55 to Local Planning Scheme No. 21 - Consideration for Final Approval

Report Placeholder – Supplementary Agenda to be published week commencing 7 August 2023

11.4. Application for Development Approval (DA 21/0822) - Proposed Extractive (Sand) - Lot 4205 Gale Road Kaloorup

Report Placeholder – Supplementary Agenda to be published week commencing 7 August 2023

12. ENGINEERING AND WORKS SERVICES REPORTS

12.1. Naming Port Geographe Coves and Parks

Strategic Theme:	Key Theme 2: Lifestyle 2.1 Recognise, respect and support community diversity and cultural heritage.
Directorate:	Engineering and Works Services
Reporting Officer:	Business Support Officer – Wendy Mekisic
Authorised By:	Director Engineering and Works - Oliver Darby
Nature of Decision:	Noting: The item is simply for information purposes and noting.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. MAP OF PORT GEOGRAPHE COVES AND PARKS [12.1.1 - 1 Page] 2. NAMES AND COMMENTS [12.1.2 - 2 pages]

OFFICER RECOMMENDATION

That the Council:

1. **Approve the proposed names in this report resulting from consultation with representatives of the Traditional Owners of the Port Geographe area.**
2. **Approves the submission of an application to Landgate for the use of the proposed names in the Port Geographe area**

EXECUTIVE SUMMARY

The purpose of this report is to provide the Council with an update of the outcome of consultation with representatives of local Wadandi families, the Traditional Owners of the Port Geographe area. The consultation was conducted during August / November 2022 in accordance with Council Decision C2207/192.

Council Policy “Naming of City Roads and Assets” and Landgate “Policies and Standards for Geographical Naming in Western Australia” were referred to as part of this consultation process.

The table below shows the names before the consultation was undertaken, as well as the agreed names as a result of the consultation with the Traditional Owners and meetings with representatives from the Port Geographe Landowners Association.

Port Geographe Parks – before Consultation	Port Geographe Parks – result of Consultation
1. Spinnaker Park	1. Koolangka Park
2. Marina Park	2. Kwondong Park
3. Dolphin Park	3. Kwilena Park
4. Keel Park	4. Keel Park
5. Woodhenge Park	5. Woodhenge Park
6. Layman Park	6. Layman Park
7. Circle Park	7. Circle Park

Port Geographe Parks – before Consultation	Port Geographe Parks – result of Consultation
8. Footbridge Park	8. Balayi Park
9. Burgee Park	9. Burgee Park
10. Tallwood Park	10. Tallwood Park
11. Pebble Park	11. Pebble Park
12. Seahorse Park	12. Seahorse Park
13. Portage Park	13. Portage Park
14. Cutter Park	14. Cutter Park
15. Transom Park	15. Transom Park
16 Geographe Beach Park	16 Geographe Beach Park

Landgate have supported the proposed names for the Port Geographe Marina area.

STRATEGIC CONTEXT

The City endorsing the proposed names assists in facilitating the recognition and support of community diversity and cultural heritage and aligns with Strategic Theme 2.1.

BACKGROUND

This report provide feedback on further consultation that was undertaken by City Officers as a result of the following Council Resolution, C2207/192 -

That the Council:

- 1. Request that the CEO undertake further consultation with the representatives of the Traditional Owners in relation to the proposal to name the various canals, coves and parks in the Port Geographe area; and*
- 2. Subject to the outcomes of that consultation, seek feedback on the proposed list of names from Landgate in accordance with Landgate Policy 1.8.1; and*
- 3. Provide a further report to Council by the end of the year on the proposed list of names for the various parks, canals and coves of the Port Geographe Area as per the Plan of Port Geographe Cove and Park Names, Item No 14.1 (27 July 2022).*

OFFICER COMMENT

City officers informed the representatives from the Port Geographe Landowners Association (PGLOA) of the outcome of the report presented to Council on 27 July 2022. The resolution requested consultation with traditional landowners in relation to the proposal to name the various canals, coves and parks in the Port Geographe area. Subsequently, City officers conducted consultation with Traditional Owners via mail, email and meetings.

A review of the 44 name suggestions received was undertaken by the City’s Cultural Development Officer and the Business Support Officer. It was determined that many of the names presented were not in accordance with the naming theme for the Port Geographe Marina and Landgate Policies and Standards for Geographical Naming in Western Australia.

A meeting was held on 7 November 2022 with representatives from the PGLOA and City Officers to consider the list of names from the consultation process with representatives of the Traditional Owners of the Port Geographe area.

The secretary of the PGLOA subsequently advised the committee of the four alternative names for the Parks in the Port Geographe Marina area.

Park 1 - Koolangka Park – replacing Spinnaker – meaning children;

Park 2 - Kwondong Park – replacing Marina – meaning wild peach;

Park 3 - Kwilena Park – replacing Dolphin – meaning Dolphins often seen in the area; and

Park 8 - Balayi Park – replacing Footbridge – meaning look out – bridge – provides a lovely view.

The names selected above have been verified as acceptable in accordance with Landgate requirements. Landgate has advised that they are supportive for the use of these names in the Port Geographe Marina.

Statutory Environment

The *Land Administration Act 1997* provides that the Minister for Lands (the Minister) has the authority for officially naming and un-naming all local parks and recreational reserves in Western Australia.

Through delegated authority, Landgate acts on the Minister's behalf to undertake administrative responsibilities, including the development of policies and procedures required for the formal approval of local parks and recreational reserve names.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Policy:

[Naming of City Roads and Assets](#)

Landgate "Policies and Standards for Geographical Naming in Western Australia".

Financial Implications

The location of aluminium street signs will be placed on the canal walls and City standard park signage will be installed for the parks.

It is estimated that these signs will cost in the region of \$20,000 and can be funded from the Port Geographe project code 14901.

External Stakeholder Consultation

The City's Cultural Development Officer contacted ten representatives of the Traditional Owners through direct mail, email and meetings. Feedback was received from five that agreed with the suggested names.

From this the City received various naming suggestions, many of the suggestions were not compliant with a nautical theme for naming the marina and did not meet Landgate guidelines. (Attachment B)

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

If the names are not supported by Council the proposal will be rejected.

CONCLUSION

It is recommended that Council endorse the names selected (listed below), resulting from the consultation process with the Traditional Owners of the Land, as alternative names for Parks within the Port Geographe Marina area.

Port Geographe Parks – Proposed Names
1. Koolangka Park - replacing Spinnaker – meaning children
2. Kwondong Park - replacing Marina – meaning wild peach
3. Kwilena Park - replacing Dolphin – meaning Dolphins often seen in the area
4. Keel Park
5. Woodhenge Park
6. Layman Park
7. Circle Park
8. Balayi Park - replacing Footbridge – meaning look out – bridge – provides a lovely view
9. Burgee Park
10. Tallwood Park
11. Pebble Park
12. Seahorse Park
13. Portage Park
14. Cutter Park
15. Transom Park
16 Geographe Beach Park

The following are the names selected for the Canals and Coves endorsed.

Port Geographe Canals - Proposed Names
A. Grand Canal
B. Geographe Quay

C. Windjammer Canal
D. Helm Canal
E. Yardarm Canal
F. Leeward Canal
G. Foremast Canal
H. Fathom Canal
I. Mizzen Canal
J. Trysail Canal
K. Pearler Canal
Coves
L. Lagoon Cove
M. Galley Cove
O. Anchor Cove

Other names suggested from the consultation process may be put forward for consideration with the developer for further developments within the Port Geographe Marina.

If endorsed by Council, City officers will submit a Naming Application with Landgate for the selected names to be approved for use in the Port Geographe Marina area.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Application to Landgate to use the names.	October 2023
Signage to be installed.	December 2023

12.2. RFT 10/23 Arboriculture Services

Strategic Theme:	Key Theme 2: Lifestyle 2.12 Provide well maintained community assets through robust asset management practices.
Directorate:	Engineering and Works Services
Reporting Officer:	Parks and Environment Technical Officer - Iain Ferry
Authorised By:	Director Engineering and Works - Oliver Darby
Nature of Decision:	Contractual: To enter into a contract e.g. a lease or the award of a tender etc.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. CONFIDENTIAL REDACTED - Signed RFT10/23 Tender Evaluation Report [12.2.1 - 27 pages]

OFFICER RECOMMENDATION

That the Council endorses the outcome of the evaluation panel's assessment of RFT10/23 Arboriculture Services and accepts the tender from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust trading as Arbor Guy as most advantageous.

EXECUTIVE SUMMARY

The City invited tenders under RFT 10/23 Arboriculture Services (the RFT) for the regular supply of arboriculture services for ongoing operating works under three separable portions:

- Urban;
- Rural and bushfire mitigation; and
- Consultancy services.

This report recommends that Council endorse the outcome of the evaluation panel's assessment and accept the tender submission from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust trading as Arbor Guy as most advantageous to the City.

STRATEGIC CONTEXT

The nature of the works supports the enhancement of our natural areas and reserves, in alignment with Key Theme 1 of the City's Strategic Community Plan – Environment.

BACKGROUND

The City of Busselton's Operations Services operating budget includes the requirement for ongoing arboriculture works to trees on City managed reserves as per policy Tree Management and Retentions on City Land. In addition, the City's Regulatory Services department deliver fire mitigation works and are actively seeking grant funding for this.

The current Arboriculture Services contract previously awarded under RFT07/19 expires 31st August 2023 with no further extension options.

OFFICER COMMENT

On 13 June 2023, tenders were invited via VendorPanel and advertised in 'The West Australian' newspaper and on the City of Busselton website. Tenders closed at 2.00pm (AWST) on Thursday 6th July 2023 and the City received six tender submissions from the following tenderers:

- Guy Badger Family Trust t/as Arbor Guy (**Arbor Guy**)
- Norcape Tree and Contracting Service (**Norcape**)
- DAR Family Trust t/as BDA Tree (**BDA Tree**)
- Arbor Centre Group Pty Ltd (**Arbor Centre**)
- Rent A Fence Pty Ltd (**Rent A Fence**)
- A Team Tree Care (**A Team Tree Care**)

Assessment Process

In accordance with the City's procurement practices and procedures, tender assessments were carried out by a tender evaluation panel comprising City officers with relevant skills and experience.

The tender assessment process included:

- Assessing tenders received against relevant compliance criteria. The compliance criteria were not point scored. Each submission was assessed on a Yes/No basis as to whether each criterion was satisfactorily met. The tender submissions received from Rent A Fence and A Team Tree Care were assessed as non-compliant.
- Assessing compliant tenders against the following qualitative criteria (weighted as indicated in the table below):

Criteria		Weighting
(a)	Price	40%
(b)	Relevant Experience	20%
(c)	Local Benefit	5%
(d)	Resources and Key Personnel	20%
(e)	Work Health and Safety (WHS)	15%

The qualitative criteria were scored depending on the extent to which each tenderer was able to appropriately satisfy each criteria. The tendered prices were then assessed together with the weighted qualitative criteria and the tenders scored and ranked to determine the most advantageous outcome to the City, based on principles of best value for money. That is, although price was a consideration, the tender containing the lowest price will not necessarily be accepted by the City and nor will the tender ranked the highest on the qualitative criteria.

Summary of Assessment Outcomes

The evaluation panel assessed the tenders for each of the separable portions the result of which are outlined below.

Urban

The outcome of the evaluation panel's assessment was as follows:

- Arbor Guy ranked first overall (first on price and first on qualitative criteria). Arbor Guy provided details of extensive experience, and comprehensive resources and WHS processes. Online access to job management and WHS systems.
- Norcape ranked second overall (second on price and third on qualitative criteria). Norcape provided relevant experience with smaller LGA's. Sufficient plant and crew to perform urban works. WHS criteria including ISO45001-OHS Management, policy, forms, sample traffic management plans and staff listed.
- BDA Tree ranked third overall (third on price and second on qualitative criteria). BDA Tree provided details of good experience with South-West LGA's. Five well-experienced staff overseeing operators and subcontractors. GPS invoicing. Basic outline of WHS policy's and procedures.
- Arbor Centre did not submit a response to this separable portion.

All of the tenderers would be able to deliver the scope of services, however Arbor Guy's qualitative criteria ranked very highly. The outcomes of the evaluation panel's assessment are further outlined in the Confidential Evaluation Report (Attachment 1).

Based on the combination of price and the qualitative criteria it is recommended that for this separable portion the tender submission from Arbor Guy be accepted.

Rural and bushfire mitigation

The outcome of the evaluation panel's assessment was as follows:

- Arbor Guy ranked first overall (first on price and first on qualitative criteria). Arbor Guy provided details of extensive experience, and comprehensive resources and WHS processes. Online access to job management and WHS systems.
- Norcape ranked second overall (second on price and second on qualitative criteria). Norcape provided relevant experience with smaller LGA's. Sufficient plant to perform most rural works although small ground crew of 6-7 staff may struggle to deliver both rural and bushfire works simultaneously.
- BDA Tree ranked third overall (third on price and third on qualitative criteria). BDA Tree provided details of good experience with South-West LGA's. Five well-experienced staff overseeing operators and subcontractors. No mulching head equipment listed. Basic outline of WHS policy's and procedures. GPS invoicing.
- Arbor Centre did not submit a response to this separable portion.

The outcomes of the evaluation panel's assessment are further outlined in the Confidential Evaluation Report (Attachment 1).

Based on the combination of price and the qualitative criteria it is recommended that for this separable portion the tender submission from Arbor Guy be accepted.

Consultancy services

The outcome of the evaluation panel's assessment was as follows:

- Arbor Guy ranked first overall (second on price and first on qualitative criteria). Arbor Guy provided details of a Diploma qualified (AQF5) General Manager. GIS capability (Konnect) which can be utilised for large and small scale tree inventories.
- Norcape ranked second overall (first on price and third on qualitative criteria). Norcape provided details of advice and reports for Shire of Harvey / Port Hedland. ArbWest / Arb Australia membership. Diploma qualified.
- Arbor Centre Group Pty Ltd ranked third overall (third on price and second on qualitative criteria). Arboriculture consultancy is the core business of this Perth based consultancy firm. Graduate Certified (AQF 8). Wide range of surveys and reports provided to numerous LGAs, private companies and government agencies.
- BDA Tree did not submit a response to this separable portion.

All of the tenderers would be able to deliver the project scope, however Arbor Guy's qualitative criteria ranked very highly. The outcomes of the evaluation panel's assessment are further outlined in the Confidential Evaluation Report (Attachment 1).

Based on the combination of price and the qualitative criteria it is recommended that for this separable portion the tender submission from Arbor Guy be accepted.

Statutory Environment

The officer recommendation supports the general function of a local government under the *Local Government Act 1995 WA* (the Act) to provide for the good government of persons in its district. Section 3.57 of the Act requires a local government to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods and service.

Part 4 of the Regulations requires that tenders be publicly invited for contracts where the estimated cost of providing the required goods and/or service exceeds \$250,000.

The officer recommendation complies with the above-mentioned legislative requirements. The estimated expenditure is in excess of \$500,000, which is above the Chief Executive Officer's delegated authority for accepting tenders.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

[Asset Management Plan](#)

Policy:

[Purchasing](#)

[Regional Price Preference](#)

[Tree Management and Retention on City Land](#)

[Work Health & Safety](#)

Financial Implications

The estimated total value of the requirements over the full contract term is \$500,000 per annum or \$2,500,000 over the total five-year term including extensions. This may increase by a further \$250,000 per annum if additional funding (subject to annual grant availability) for fire mitigation work is received.

The requirements will be funded from the 2023/24 endorsed budget as follows:

- Operation Services operational budget – cost centres 1016 and 1017.
- Regulatory Services operational budget.
- External funding through Regulatory Services Activity fund grant for fire mitigation works.

The Preferred Tenderer's pricing compared to the City's current tender (RFT07/19) is summarised below:

- Urban +7%
- Rural -5%
- Consultancy +5%

CPI over the same time period (June 2022 - June 2023) increased by 6%.

External Stakeholder Consultation

Not Applicable

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 considering any controls already in place.

No risk of medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could:

1. Award the tender in full or in part to an alternative tenderer. In the view of the Officers this could result in the tender being awarded that is not most advantageous to the City.
2. Decline to accept any tender. Officers do not consider that this will represent the most advantageous outcome for the City. It will also result in significant delays to the contract award and the provision of arboriculture services to the City.

CONCLUSION

The submission from Fine Brand Pty Ltd as trustee for Guy Badger Family Trust t/as Arbor Guy is considered most advantageous to the City. Officers recommend that the City award the contract for supply of consultancy, urban, rural and bushfire mitigation to Fine Brand Pty Ltd as trustee for Guy Badger Family Trust t/as Arbor Guy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
Commence contract	1 September 2023

13. COMMUNITY AND COMMERCIAL SERVICES REPORTS

NIL

14. FINANCE AND CORPORATE SERVICES REPORTS

NIL

15. CHIEF EXECUTIVE OFFICERS REPORTS

15.1. Councillors Information Bulletin

Strategic Theme:	Key Theme 4: Leadership 4.4 Govern a professional organisation that is healthy, capable and engaged.
Directorate:	Finance and Corporate Services
Reporting Officer:	Executive Assistant to Council - Katie Banks
Authorised By:	Chief Executive Officer - Tony Nottle
Nature of Decision:	Noting: The item is simply for information purposes and noting.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	<ol style="list-style-type: none"> 1. Current Active Tenders - August 2023 [15.1.1 - 1 page] 2. 28.06.23 Congratulations Ltr from Mayor to Hon R H Cook [15.1.2 - 1 page] 3. 10.07.23 Acknowledgment Ltr from Premier R H Cook [15.1.3 - 1 page] 4. 10.07.23 Councillor vacancy to remain unfilled - Approval Letter [15.1.4 - 1 page] 5. Current Running SAT Reviews [15.1.5 - 4 pages] 6. Dunsborough Precinct Structure Plan and Associated Amendment No.52 - Ltr from Mayor to WAPC [15.1.6 - 3 pages] 7. Dunsborough Precinct Structure Plan and Associated Amendment No.52 - Ltr from WAPC [15.1.7 - 1 page] 8. Council Resolution Status [15.1.8 - 20 pages]

OFFICER RECOMMENDATION

That the items from the Councillors Information Bulletin be noted:

- Minutes of Committee Meetings
- Minor Donations Program
- Current Active Tenders
- State Administrative Tribunal Reviews Update
- Council Resolution Status Update

EXECUTIVE SUMMARY

This report provides an overview of a range of information that is considered appropriate to be formally presented to the Council for its receipt and noting. The information is provided in order to ensure that each Councillor, and the Council, is being kept fully informed, while also acknowledging that these are matters that will also be of interest to the community.

Any matter that is raised in this report as a result of incoming correspondence is to be dealt with as normal business correspondence, but is presented in this bulletin for the information of the Council and the community.

INFORMATION BULLETIN

Minutes of Committee Meetings

Minutes of the following Committee Meetings listed in the table below are to be noted as received:

Committee	Meeting Date	Minutes
Finance Committee	19 July 2023	Minutes
Policy and Legislation Committee	26 July 2023	Minutes

Minor Donations Program – July 2023

The Council allocates an annual budget allowance to the Minor Donations Program. This is provided such that eligible groups and individuals can apply for and receive sponsorship to assist them in the pursuit of endeavours that bring direct benefit to the broader community. Allocation of funds is delegated to the Chief Executive Officer, in accordance with the published guidelines and funding availability.

Nine applications were approved throughout July 2023 totalling \$5,257 as outlined below:

Recipient	Purpose	Amount
Be My Koorda Aboriginal Corporation	Be My Koorda Aboriginal Corporation is a locally based aboriginal support group for parents with children with Autism and ADHD. They ran a school holiday program in July. Funding was approved to cover the cost of their movies outing and lunch.	\$480.00
St John of God Social Outreach and Standby	St John of God Social Outreach and Standby are holding a free community event on 24 November 2023 to help people in the community who have been bereaved by suicide or who are currently supporting someone bereaved by suicide. The hire fee for the Undalup Room has been waived in support of this event.	\$567.00
Radiance Network South West	Radiance Network South West are hosting the annual 'Radiance Festival and Big Pram Walk' on 12 November 2023 to raise awareness of and show community support for peri-natal anxiety and depression. The cost of face painting and hire of PA equipment has been covered in support of this free community event.	\$660.00
Isabella Duff	Selected to represent WA as part of the U16 Girls Hockey team competing at the School Sport Australia National Schools Championships in Adelaide – 12 to 19 August 2023. This donation will assist with covering the costs associated with attending the competition.	\$500.00

Recipient	Purpose	Amount
Layla Heslewood	Selected to represent WA as part of the 12s Girls Team competing at the School Sport Australia National Schools Championships in Hobart TAS – 30 July to 4 August 2023. This donation will assist with covering the costs associated with attending the competition.	\$500.00
Acton Park and Districts Community Hall	The Acton Park and Districts Community Hall is holding an event on 7 January 2024 to celebrate the Acton Hall's rich 100-year history. Their donation request has been supported to cover the cost of a photographer and catering for the free community event.	\$1,000.00
Raphaela Raaber	Raphaela is holding an event at ArtGeo for the Artists for Sustainability Network - Incubator Event on 11 August 2023. This event is to show how art can contribute to fostering a sustainable transition and enabling artists to connect and sign up to become part of the network. This event is open to all community members with a maximum of 50 participants. This donation will be used to cover the cost of catering for the event.	\$350.00
Busselton Woodturners	The Busselton Woodturners are hosting their annual 'Weekend Workshop', hosting local and visiting members of the WA Woodturners Association. It is anticipated that the event will attract over 100 visiting woodturners to the City. This donation will be used to waive the cost of hiring Churchill Park Hall.	\$200.00
Jason Ey	Jason is organising an event, 'Raise a Tonne for Breast Cancer WA' on 28 October 2023 at the Busselton Foreshore Amphitheatre. The aim of this event is to raise funds and bring awareness to breast cancer. The event is open to anyone - they are to contribute a donation to deadlift a weight. It is anticipated that the event will attract around 1,000 spectators throughout the day. This donation will be used to assist with covering the cost of advertising on the City's digital billboard and the hire of a PA system for the day.	\$1,000.00
TOTAL		\$5,257.00

Total budget remaining \$24,743.00.

Current Active Tenders

The Tender update for July 2023 is provided at Attachment 1.

State Administrative Tribunal Reviews Update

The Current State Administrative Tribunal Reviews is at Attachment 2.

Correspondence: Letter of Congratulations to Premier Cook from Mayor and response

Correspondence between the Mayor and Roger Cook MLA, Premier is provided at Attachments 3 and 4.

Correspondence: Councillor vacancy remain unfilled

Correspondence from the Electoral Commissioner regarding the vacancy on Council created following Mayor Henley's resignation effective 21 October 2023 is provided at Attachment 5.

Correspondence: Update on the Housing Diversity Pipeline – Brown Street, Busselton

Correspondence from the Director General, Department of Planning, Lands and Heritage regarding the completion of the Expression of Interest process for the first land releases under the Western Australian Government's Housing Diversity Pipeline is provided at Attachment 6.

Correspondence: Dunsborough Precinct Structure Plan and Associated Amendment No.52

Correspondence sent to the Western Australian Planning Commission regarding the Dunsborough Precinct Structure Plan and Associated Amendment No.52 is provided at Attachment 7. Attachment 8 is the response from David Caddy, Chairman, Western Australian Planning Commission.

Council Resolution Status Update

The current Council Resolution Status Review is provided at Attachment 9.

15.2. Council Policy - Appointment of Acting Chief Executive Officer

Strategic Theme:	Key Theme 4: Leadership 4.4 Govern a professional organisation that is healthy, capable and engaged.
Directorate:	Finance and Corporate Services
Reporting Officer:	Acting Director Finance and Corporate Services - Sarah Pierson
Authorised By:	Chief Executive Officer - 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 Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Proposed Council Policy Appointment of Acting Chief Executive Officer [15.2.1 - 2 pages]

OFFICER RECOMMENDATION

That the Council adopt the Council Policy ‘Appointment of Acting Chief Executive Officer’ as per Attachment 1.

EXECUTIVE SUMMARY

This report presents a new Council Policy ‘Appointment of Acting Chief Executive Officer’ (CEO) for Council adoption. At its July meeting the Policy and Legislation Committee resolved to recommend to Council that the current policy ‘Designation of Senior Employees and Acting CEO’ be rescinded, with the designation of senior employees no longer considered necessary, and that the CEO present a new Appointment of Acting CEO policy to the Council.

BACKGROUND

Section 5.37(1) of the *Local Government Act 1995* (the Act) provides for a local government to designate employees or persons belonging to a class of employees to be Senior Employees. Section 5.37(2) of the Act requires the CEO to inform the Council of each proposal to employ or dismiss a Senior Employee. The Council has had a policy covering the designation of Senior Employees since at least 2015.

Further, Section 5.36 of the Act establishes that a person is not to be employed in the position of CEO unless the council believes that the person is suitably qualified for the position. In June 2018 the Council therefore adopted a policy covering both the designation of Senior Employees and the appointment of an Acting CEO.

The current policy was adopted in 2019 with minor amendments to identify the importance of succession planning and the acting of those employed in Senior Employee or Director positions as CEO.

At the Policy and Legislation Committee meeting held 26 July 2023 the Committee considered a review of the current policy designating senior employees, with the title of designated positions proposed for amendment to reflect a recent organisational review and structure alignment.

The Committee determined that the designation of senior employees, which is optional under the Act, is no longer necessary and that the CEO should be responsible for the appointment and termination of staff, including those currently designated as senior employees (Directors). In coming to this view, the Committee noted the potentially problematic nature of Council determining to reject an appointment without having been involved in the recruitment process. Similar problems may arise when rejecting a termination without involvement in the performance management or discipline process. The Committee therefore resolved to recommend to the Council that the policy be rescinded. They further requested that the CEO prepare and present to Council at its August meeting a policy covering the appointment of an acting CEO, to ensure those arrangements remain covered by policy.

OFFICER COMMENT

In accordance with the Committee recommendation, officers have prepared a new Council Policy 'Appointment of Acting Chief Executive Officer' (the Policy). The Policy supports the ongoing appointment of persons holding Director positions with the City, subject to the CEO's discretion based on performance, availability and operational requirements. Officers recommend that the Policy be adopted by Council, subject to Council accepting the Committee's recommendation, noting it is only a recommendation to Council, with Council to make the final decision.

If Council resolve not to accept the Committee's recommendation in relation to the designation of senior employees and opt to retain the current Designation of Senior Employees and Acting CEO policy, it is recommended that the Council resolve not to endorse the Policy (presented by this report).

Statutory Environment

In accordance with Section 2.7(2)(b) of the Local Government Act 1995 (the Act) it is the role of the Council to determine the local government's policies. The Council does this on the recommendation of a Committee it has established in accordance with Section 5.8 of that Act. As detailed in the background section of this report section 5.36 of the Act sets out requirements in relation to the appointment of a CEO.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plan or policy:

Plan:

Not applicable.

Policy:

[Designation of Senior Employees and Acting CEO](#)

As outlined in the officer comment, the Policy and Legislation Committee have recommended to Council that this policy be rescinded.

Financial Implications

Not Applicable

External Stakeholder Consultation

Not Applicable

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, noting that the CEO has indicated he will continue to be keep the Council informed of significant (such as appointments and termination related matters) in relation to the City’s executive team.

Options

As an alternative to the proposed recommendation the Council could:

1. Determine not to adopt the Policy
2. Determine to make amendments to the Policy.

CONCLUSION

The Policy maintains strategic guidance in relation to the appointment of an Acting CEO, subject to the Council resolving to accept the Policy and Legislation Committee’s recommendation in relation to the rescission of the current Designation of Senior Employee and Acting CEO policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The officer recommendation will be implemented in full, or in stages as per the following table:

Milestone	Completion Date
The Policy will be placed on the City’s website	23 August 2023

16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

17. URGENT BUSINESS

18. CONFIDENTIAL MATTERS

Nil

19. CLOSURE