



Ordinary Council Meeting

Supplementary Agenda

31 January 2024

CITY OF BUSSELTON

Supplementary agenda for the Council Meeting to be held on 31 January 2024.

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11 COMMUNITY PLANNING REPORTS

11.2 Development Application - DA23/0327 - Single House (Swimming Pool, Gym & Garage) - Special Character Area at Lot 16 (No. 6) Seaview Rise, Eagle Bay

Strategic Theme:	Key Theme 4: Leadership 4.2 Deliver governance systems that facilitate open, ethical and transparent decision making.
Directorate:	Community Planning
Reporting Officer:	Planning Officer – Kelley Nilsson-Linne
Authorised By:	A/Director Community Planning – Rachel Runco
Nature of Decision:	Regulatory: To determine an application/matter that directly affects a person’s right and interests e.g. development applications, applications for other permits/licences, and other decisions that may be reviewable by the State Administrative Tribunal.
Voting Requirements:	Simple Majority
Disclosures of Interest:	No officers preparing this item have an interest to declare.
Attachments:	1. Location Plan – 11.2.1 2. Development Plans – 11.2.2 3. Aerial indicating building setback line from Eagle Bay Road –11.2.3 4. Officer Assessment Report - 11.2.4 5. Schedule of Submissions – 11.2.5 6. Perspectives Plan – 11.2.6

OFFICER RECOMMENDATION

That the Council determines:

1. That application DA23/0327 submitted for a Single House (Swimming Pool, Gym and Outbuilding) on Lot 16 (No. 6) Seaview Rise, Eagle Bay is generally consistent with *Local Planning Scheme No. 21* and the objectives of the zone within which it is located; and
2. Grant development approval for the proposal subject to the following conditions:

GENERAL CONDITIONS:

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the City.

PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS:

3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and approved in writing:

- 3.1 Details of on-site effluent disposal.
- 3.2 Details of stormwater and surface water drainage. Stormwater to be retained for use and/or infiltration within the lot at a rate of 1m³ per 65m² of impervious area.
- 3.3 A notification in the form of a section 70A notification, pursuant to the Transfer of Lands Act 1893 (as amended) is to be placed on the Certificate of Title of the lot advising that:

“This land is within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner and maybe subject to a Bushfire Management Plan. Additional planning and building requirements may apply to development on this land”

A copy of the Certificate of Title with section 70A notification registered against it, or a Landgate lodgement receipt, is to be submitted to the City.

PRIOR TO OCCUATION/USE OF THE DEVELOPMENT CONDITIONS:

4. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 2 and 3 have been implemented, and the following Condition(s) complied with:
 - 4.1 Landscaping and reticulation shall be implemented in accordance with the approved Landscape Plan and shall thereafter be maintained to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.

ONGOING CONDITIONS:

- 5 The works undertaken to satisfy Condition(s) 2, 3 and 4 shall be subsequently maintained for the life of the development, and the following Condition(s) complied with:
 - 5.1 The external materials of the approved development shall comprise of prescribed materials as identified by the City of Busselton *Local Planning Scheme No.21*.

EXECUTIVE SUMMARY

The report has been amended and republished since its original publication in the agenda for the 31 January 2024 Ordinary Council meeting to include the following:

- Incorporation and consideration of elements raised through two submissions made through the City's Yoursay platform, unavailable when the report was drafted;
- Inclusions within the Officer comment to clarify the permissible application of discretion applied to the assessment of the building envelope with consideration of SP6;
- Update to Attachment 4: Officer assessment report expanded to include more detail of the R-codes assessment to explain application of clause 4.3.1 of the Scheme applied to the building envelope assessment;
- Update to Attachment 4: Explanation of how submissions related to bushfire risk concerns have been addressed through the development landscaping plan.
- Update to Attachment 5: Schedule of submissions to respond to missing two submissions.
- Perspective plan included as Attachment 6.

The City has received a development application for a Single House (Swimming Pool, Gym and Outbuilding) at Lot 16 (No. 6) Seaview Rise, Eagle Bay which is located within the Eagle Bay Special Character Area (EBSCA).

The Council has requested that, due to the nature of the development, the application be determined by the Council.

Having considered the application, including submissions received, it is considered that the application is consistent with the City of Busselton *Local Planning Scheme No.21* ("Scheme") and the relevant elements of the broader planning framework.

Therefore, it is recommended that the application be approved, subject to appropriate conditions.

STRATEGIC CONTEXT

As per Objective 4.2 of the Strategic Community Plan the application has been referred to Council to facilitate transparent decision making, specifically in the Special Character Areas of the City.

BACKGROUND

Key information regarding the application is set out below:

1. **Landowner:** Chermaine Leo, Lauren and Kayla Fallace
2. **Applicant:** Joe Ferrant
3. **General description of the site:**

The Site is located off Seaview Rise, which is located along the northeast boundary. Eagle Bay Road is located along the southwest boundary. The site is regular in shape, it has an area of 5,907m² and rises approximately 3.6m; rising from 63.5AHD at the north boundary (Seaview Rise) up to 67.10AHD at the south boundary (Eagle Bay Road). The Site adjoins a residential property to the northwest, Lot 38 (No. 4) and a residential property to the southeast, Lot 17 (No. 8)

A Site Location Plan is provided at Attachment 1.

4. Current development/use:

The Site is currently vacant with no previous approvals on the site.

5. Applicable zoning and special control area designations:

- Zoning – Residential.
- Density - R2.5.
- Landscape Value Special Control Area.
- Eagle Bay Special Character Area Special Control Area.

6. Land use Permissibility:

Single House is a permitted (“P”) land use under Table 1 – The zoning table of the Scheme.

7. Brief description of the proposed development:

The proponent lodged a development in application in May 2023 for a ‘Single House’, the proposal comprises a dwelling that is mainly two-storey with a partially three-story element (where the garage is in part below ground level) as well as a separate single storey habitable building proposed to be used as a “gym” and another separate single storey games and change room, with pump room enclosed. The development also includes a below ground swimming pool and outbuilding.

This report is supported by the following attachments:

1. Attachment 1 – Site Location Plan
2. Attachment 2 – Development Plans
3. Attachment 3 – Aerial indicating building setback line from Eagle Bay Road
4. Attachment 4 - Officer Assessment Report
5. Attachment 5 – Schedule of Submissions
6. Attachment 6 – Perspectives Plan

OFFICER COMMENT

The components of the planning framework that relate to this development, and how they should be considered in relation to assessment of the proposal are summarised below:

- LPS21 (Schedule 4) EBSCA
Setbacks
Specifies the minimum setbacks for R2.5 density properties, front 20m, Rear 6m, Secondary Street (if applicable) 12m.
Building Height
The applicable height limits will be 7.5 metres within 150 metres of the mean high water mark and 9.0 metres for all other areas unless otherwise determined by zoning provisions, a Structure Plan (see comments below regarding discretion applicable to a Structure Plan).

As identified through the Pennock decision, there is no discretion to vary the provisions contained within Schedule 4 of the Scheme. The proposal satisfies all relevant elements of Schedule 4 – EBSCA as applicable to the development site.

- Special Provision 6 (SP6)
Building height
SP6 specifies a maximum height limit at 7.5m.
- Eagle Bay Structure Plan (2007)
Setbacks
The Structure Plan specifies a setback to Eagle Bay Road of 40 m. *Building Height*
The Structure Plan specifies a maximum height limit at 7.5m.

The planning framework allows for discretion to be applied to conditions within Structure Plans and Special Provisions.

In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2, clause.67 (Consideration of application by local government) (Regulations)* and *clause 27(1) of the Deemed Provisions*: the structure plan is a “due regard” planning instrument only. Therefore, even though the structure plan is referenced to within Schedule 4, as the Regulations are the higher order planning document, the provisions contained within the Structure Plan are “due regard” only meaning discretion exists to vary any provisions contained within the structure plan.

Clause 4.5 of the Scheme - Variations to Site and Development Standards and Requirements provides discretion to vary site and development standard and requirements within the Scheme where R-codes do not apply. As such, it is considered that the provisions contained within SP6 are able to be varied.

In light of the above, it is considered that as there is discretion to vary the above-mentioned Structure Plan and Special Provisions, a merit-based assessment to determine the appropriateness of these discretions must be undertaken. The matters listed in clause 67 of the Regulations should be considered in the assessment of these discretions.

Setbacks

- LPS21 (Schedule 4) EBSCA – Cannot be varied
Setbacks
Specifies the minimum setbacks for R2.5 density properties, front 20m, Rear 6m, Secondary Street (if applicable) 12m.
- EBSP (2007) - Discretion applies
Setbacks
The Structure Plan specifies a setback to Eagle Bay Road of 40 m.

When submitted the development proposal was set back 15m from Eagle Bay Road. Officers requested that this setback be amended to a minimum of 22m, in accordance with similar established setbacks of the two dwellings on lots either side of the Site:

- A. Lot 38 (No.4 Seaview Rise), adjoining the north/ northwest boundary of the Site, has an approved setback of 22m from the dwelling to Eagle Bay Road.
- B. Lot 17 (No.8 Seaview Rise), adjoining to the southeast boundary of the Site, has an approved setback of 22m from the dwelling to Eagle Bay Road.

An aerial marking the 22m setback line of these existing dwellings as well as the proposed dwelling is provided at Attachment 3.

To further ameliorate any visual impact of the dwelling from Eagle Bay Road the applicant has provided a landscaping plan which proposes vegetation that at its maturity will assist in screening the development from Eagle Bay Road. A copy of the landscaping plan is provided within the proposed development plans at Attachment 2.

Although a variation to the Structure Plan, the 22m setback to Eagle Bay Road fully accords with the setback requirements as set out in *LPS 21, Schedule 4 – Eagle Bay Special Character Area and the State Planning Policy 7.3 - Residential Design Codes Volume 1 (R-Codes)*. LPS21, Schedule 4 and the R-Codes both require a 6m setback to Eagle Bay Road.

Given the above, the proposed setback of 22m is considered to be in keeping with the established building line along this section of Eagle Bay Road, while still adequately separated from the road by distance and landscaping.

Building Height

- LPS21 (Schedule 4) EBSCA - Cannot be varied
Building Height
Specifies the maximum building height is 7.5m if within 150 of the mean high water mark and 9.0 metres for all other areas, or as specified within a Structure Plan
- Special Provision 6 (SP6) - Discretion applies
Building height
SP6 specifies a maximum height limit at 7.5m.
- EBSP (2007) - Discretion applies
Building Height
The Structure Plan specifies a maximum height limit at 7.5m.

The EBSP and SP6 both contain a 7.5m height building control, however, as this property is over 150m from the high-water mark, without the structure plan a 9.0 metre height would apply under the EBSCA.

The development originally proposed the highest point of the dwelling at 9m. Following the advertising of plans to neighbours, amended plans were received, lowering the highest point of the dwelling to 8.7m. This proposed building height is 0.1m lower than the neighbouring property (Lot 48, Number 4 Seaview Rise).

The highest point of the proposed dwelling is 8.7m, this is located along the northern elevation to accommodate the partial underground garage. It is important to note, that only a section of the northern elevation will be 8.7m high, with the majority of the building height 8.3m or below with the additional wall heights ranging from 4.2m, 6.5m, 7.1m, 7.3m, 7.5m, 7.7m and 8.2m. The proposal has been designed to address the site's natural slope and for the most part is a two-storey dwelling on all other elevations, with three storeys only proposed where the garage is located.

There are several examples of constructed buildings in the vicinity of the proposal subject to the same SP6 provisions that have been approved with heights greater than 7.5m including:

- A. Lot 38 (No.4 Seaview Rise), adjoining the north/northwest boundary of the Site, dwelling approved with its highest point at 8.8m above natural ground level.
- B. Lot 28 (No. 22 Seaview Rise) dwelling approved with its highest point at 8.6m.

Furthermore, below are several examples of other three storey dwellings within the EBSCA -

- A. Lot 15 (No. 4) Wedgetail View is a three storey dwelling that was approved in 2003, due to the slope of the site basement level was largely cut into the site.
- B. Lot 67 (No.16) Gipsy Street is a three storey dwelling that was approved in 2008, and due to the slope of the site it has been designed to address the natural contours of the site (the site slope from the north to the south, 101 AHD to 107 AHD). Due to the contours of the site some sections of the elevations are greater than 7.5m and some sections of elevation are more than 9m high.
- C. Lot 69 (No.1) Otranto Close is a three storey dwelling that was approved in 2007. This dwelling has also been designed to address the contours of the site.

Extracts of the approved plans referenced above are provided within the Officer's report provided at Attachment 4.

It is considered that due to the design, layout, sloping site and extensive landscaping plan the proposed height of the dwelling in this instance is acceptable. The highest point of the dwelling is set back from neighbours to the north by 15.4m, which is deemed an adequate distance and will not result in overlooking or over shadowing. The highest points of the dwelling are setback from Eagle Bay Road by approximately 54m and setback from Seaview Rise by approximately 22m-37m.

It is the Officer's perspective that due to the design, context within the location as well as the combination of cut and fill and the landscaping that is to be installed, the proposed dwelling will not have a detrimental impact on the character of the EBSCA and therefore is appropriate in this instance.

Building Envelope – Discretion Applied

LPS21 Clause 4.3.1 (g) requires for properties zoned R2.5 that:

‘all building development is to be contained within a building envelope area which does not exceed 1,000m², or as otherwise required by a plan adopted pursuant to Part 4 of the Deemed Provisions’ (Structure Plan).

There is no designated building envelope delineated through a current structure plan for this lot. Discretion can be applied to the application of *clause 4.3.1 (g)*. The proposed building development is calculated to be 1194m², 194m² over the 1000m². To consider the appropriateness of exercising discretion, the R-Codes provides guidance in respect of the extent of building development within the Residential zone.

For R2.5 zoned properties the Open Space requirement is a minimum of 80%. Due to the lot size of the property this means the proposed building development area complies with the Open Space requirement, including the Design Principles of Open Space and all setbacks to neighbouring properties.

It is considered appropriate to exercise discretion to allow for the 194m² increase in building development.

Statutory Environment

The key statutory documents relevant to this proposal include the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and the relevant objectives and provisions of the Scheme. Each is discussed below under the relevant subheadings:

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2 of the Regulations, (the Deemed Provisions) are to be read in conjunction with the Scheme with clause 67 setting out the matters to be considered by a local government in the determination of any development application.

In considering an application for development approval (other than an application on which approval cannot be granted under subclause (1)), the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —

- (a) *the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- ...
- (c) *any approved State planning policy*
- ...
- (f) *any policy of the State;*
- (g) *any local planning policy for the Scheme area;*
- (h) *any structure plan or local development plan that relates to the development;*
- ...
- (m) *the compatibility of the development with its setting, including —*
 - (i) *the compatibility of the development with the desired future character of its setting; and*

- (ii) *the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) *the amenity of the locality including the following —*
 - (i) *environmental impacts of the development;*
 - (ii) *the character of the locality;*
 - (iii) *social impacts of the development;*
- ...
- (y) *any submissions received on the application;*

Attachment 4 provides for a full assessment against the relevant elements of clause 67.

Local Planning Scheme No. 21

The proposal is consistent with the objectives of the 'Residential' zone as defined by the Scheme, specifically to "to facilitate and encourage high quality design, built form and streetscapes."

It is considered that given the site layout, design and landscaping; the proposal is fully compliant with clause 5.4 Landscape Value Area.

Further, the application complies with Schedule 4 of the Scheme which sets out the area specific development controls for the EBSCA.

State Planning Policy 7.3 Residential Design Codes

The R-Codes are the over-arching planning document guiding built form outcomes in the 'Residential' zone and are to be read as part of the Scheme. The compliance of the proposal with the requirements of the R-Codes has been discussed above and in Attachment 4.

Relevant Plans and Policies

The officer recommendation aligns to the following adopted plans or policies:

State Planning Policy 3.7 – Planning in Bushfire Prone Areas (SPP 3.7)

SPP 3.7 directs how land use and development should address bushfire risk management and applies to all land which has been designated as 'bushfire prone' by the Fire and Emergency Services Commissioner as per the 'Map of Bushfire Prone Areas. The compliance of the proposal with the requirements of the SPP3.7 has been discussed in the Offers Report, Attachment 4.

Local Planning Policy 3.1 - Reflective Building Materials (LPP 3.1)

LPP 3.1 Provides guidance on the control reflective building materials to protect the visual amenity of residential living environments. A schedule of materials has been provided that demonstrate the development will comply with the requirements of LPP3.1 and the use of dark tones are proposed.

Local Planning Policy 3.3 – Eagle Bay Special Character Area (LPP 3.3 EBSCA)

LPP 3.3 in conjunction with Schedule 4, establishes the baseline development controls for the EBSCA with the principal objective of preserving the unique and specific character of Eagle Bay. The design

setting and appearance of the proposed single house complements the established character and attributes of the area.

The proposal is consistent with the requirements of LPP 3.3.

Local Planning Policy 4.2 - Bushfire (LPP 4.2)

LPP 4.2 provides guidance on the City's assessment of development addressing the requirements of State Planning Policy 3.7 Planning in Bushfire Prone Areas to achieve acceptable bushfire protection. The compliance of the proposal with these requirements have been discussed in the Offers Report, Attachment 4.

Local Planning Policy 6.1 - Stormwater Management (LPP 6.1)

Provides guidance on acceptable stormwater management. A condition is recommended that demonstration of compliance with this local planning policy being achieved.

Local Planning Policy 4.10 - Outbuilding and Other Non-habitable Buildings (LPP 4.10)

LPP 4.10 establishes development standards for outbuildings and non-habitable buildings (i.e – carports, patios etc) within the City. The proposal satisfies the height and size requirements of the policy however proposes a variation in regard to setbacks which are to be in accordance with the R-Codes. The appropriateness of the proposed setbacks is discussed in the assessment provided at Attachment 4.

Financial Implications

Not Applicable

External Stakeholder Consultation

Consultation on the proposed development was undertaken by mailing letters to four surrounding property owners and occupiers. In response to consultation, four submissions were received, three from a surrounding landowner and one from the president of the Residents of Eagle Bay Association.

All submissions received raised concerns with the proposed development. An outline of the concerns raised in these submissions is listed below with full details provided within Attachment 5:

1. Overall height of the development.
2. Proposed setback from Eagle Bay Road.
3. Amount of fill proposed.
4. Large size of the development footprint.
5. Development will result in significant building bulk.
6. Visual impact of the development on the ridge line.

Concerns relevant to the assessment of the proposal under the planning framework have been addressed in the officer comment section of this report. Responses to other items are addressed in Attachment 4 – Officer Report.

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 risk of medium or greater level have been identified.

Options

As an alternative to the proposed recommendation the Council could:

1. Resolve to refuse the application and provide reasons for such a decision: or
2. Approve the development subject to additional or different conditions.

CONCLUSION

It is deemed that lawful discretion to vary the elements of the development which do not comply with the relevant planning framework exists. Therefore a determination of the application must be made on a merit-based assessment taking into consideration the relevant matters to be considered under the clause 67 of the Regulations. It is deemed that the development is compatible within its setting and is consistent with the other development approved within the locality. Furthermore, it is considered that the development is consistent with the character of the locality.

Accordingly, the application is recommended for approval subject to conditions.

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
Issue the development approval to the applicant	Within two week of Council decision

16 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

16.5 City of Busselton Planning Approach

MOTION

That the Council formally approaches the WAPC and requests to make comment on the following town planning sentiment supported for the future direction of the City of Busselton's Local Planning Scheme 22:

1. That settlement nodes within the City of Busselton district are planned and designed to a stated (optimal) population number with defined and sustainable (fixed) urban boundaries to protect against sprawl and so as not to detract from the historical and current lifestyle characteristics enjoyed in each respective node.
2. That a new site for significant future urban growth of medium density (a 'City') be created south of Vasse (or planned adjacent to Vasse should core infrastructure of sewer, power and water so justify) to accommodate the long term future population growth of the district and sub-region and for this to be timed for development to ensure the design population numbers for the District's respective settlement nodes (defined in point 1 above) are not pressured to be exceeded. This medium density planned city will promote sustainable living practices.
3. Reflective of the above, an Amendment to (or review of) the Leeuwin Naturaliste Sub-Regional Strategy drawing specific comment including detailing what would be necessary to ensure its prioritising in a very timely manner.
4. The WAPC (its authorised representative/s) be invited to attend and brief the Council on the above and articulate the input mechanism for any relevant WAPC investigations including any broader (SW) Regional Strategy. The briefing to also facilitate questions and views posed by the collective elected member group.
5. The CEO to convene a workshop of elected members and relevant staff to properly understand what needs to be justified or clarified in the LNSRPS and what needs to be added or modified from a City perspective, (i.e. a deep dive into the document and its governing development and decision-making process).
6. The CEO to ensure the workshop and the request/approach is a priority matter for addressing by the new Director of Planning. Progress on prosecuting this matter will be the subject of timely briefings as and when feedback occurs and failing feedback, a report of status to be given to the Council by the end of February 2024.

NOTICE OF MOTION

Cr Andrew Macnish has given notice that at the Ordinary Council meeting on 31 January 2024 he will move the above motion.

REASONS

- It is vital the City and WAPC have a mutually agreed understanding of the value of local community input into future town planning for the district with the right of our community of interest to self-determination and thus full inclusion and interaction with the considerations within the broader (State) planning process.
- The WAPC has not yet concluded its high level planning work for the region and sub-region. Previous attempts at constructive dialogue may have been adversely impacted upon and now with a new Council, the clear connection must be offered and established. This will be facilitated with the commencement of the new Director of Planning.
- (New) Councillors will benefit from the workshop and it will help position the City in its preparations for the desired engagement with the WAPC.
- As the airport expands and the region's exposure grows, tourists will need contemporary experiences such as those that can be created in a developing new city.
- Industry needs workers and more trade skills will be attracted to the district for construction and maturing phases of a new City. A critical mass of economy size has yet to be reached to self-sustain the district.
- A new city increases the opportunity to address/provide for public housing options.
- Design populations for the City's respective settlement nodes will breed infrastructure and service level certainty and of a centre of the anticipated size, facilities such as a 50m pool can be planned for with confidence (including the setting of a defensible developer contributions regime).
- Supporting such an intervention into the town planning process signals a willingness to embrace a desired future and respond directly to recent public sentiment against sprawl, moon-scaped landscapes hosting tiny lots and more opportunity for public and low cost housing away from high cost real estate driving factors.
- The WAPC's subregional investigations have progressed, but as yet not been cast in stone so although timing is late, if the Council acts now it can shape the next 20 years and protect the lifestyle (by better managing growth) some would contend it is obliged to.
- It appears the previous Council was not asked for its input to the Leeuwin Naturaliste sub-regional strategy currently being progressed and resolved major concerns in March 2023 (Item 13.3 Council meeting).

COUNCIL DECISION

C2303/001 Moved Councillor S Riccelli, seconded Councillor R Paine

RECOMMENDATION 2 (LEEWIN-NATURALISTE SUB-REGIONAL STRATEGY)

That the Council, with respect to modifications to the Leeuwin-Naturaliste Sub-Regional Strategy (LNSRS) -

3. Indicate that it has significant concerns in relation to elements of both the substantive planning decisions and the processes by which the decisions were made.
4. With respect to the WAPC decision related to LNSRS modifications –
 - A. Indicate that the key concerns relate to –
 - i. The fact there was no opportunity for community consultation or formal consultation with the City before amendments were made to the LNSRS, in particular with respect to the Dunsborough Planning Investigation Area;
 - ii. The direction for Vasse North and Vasse South; and
 - iii. Seek clarity around land designated as an ‘Open Space Investigation’ area, with respect to the Vasse North Planning Investigation Area and Abbey South Planning Investigation Area as this is not an existing land use designation in the LNSRS
 - B. Indicate that, with respect to the Dunsborough Planning Investigation Area, the LNSRS needs to more explicitly set out expectations for future structure planning in relation to –
 - i. Genuine engagement with the community, formal consultation with the City, advertisement and consideration through Council as an integral and essential part of the process;
 - ii. Maintaining and enhancing environmental values;
 - iii. Meeting long-term land supply needs for employment and services for the Dunsborough community, through provision of adequate ‘Service Commercial’ and ‘Local Centre’ lots; and
 - iv. Meeting long term land supply needs for educational, community and recreation facilities for the Dunsborough communities.
 - C. Request that the WAPC re-consider the LNSRS modifications, in light of the Council’s concerns; and
 - D. Given that the report considered by the WAPC in October 2021 was released to the City following an FOI request, ask that the WAPC to identify the basis on which the report, and reports of that kind, are not generally available to the public (with personal or other confidential information redacted as necessary).

CARRIED 8/1

**FOR: CR RICCELLI, CR PAINE, CR HENLEY, CR RYAN, CR RICHARDS,
CR COX, CR CRONIN, CR LOVE**

AGAINST: CR CARTER

Reasons: There are significant concerns about the lack of community and City consultation being conducted regarding the Dunsborough Planning Investigation Area, and there are a number of considerations that have not been identified in the LNSRS.

- State Planning Policy 6.1 Leeuwin-Naturaliste Ridge defined a settlement hierarchy 25 years ago. That policy does not include Busselton nor anything east of Bussell Highway nor any new significant settlement node (thus arguably population pressuring the existing ones).
- “Consideration of the future form that Dunsborough requires consideration to establish an agreed vision and supporting strategy”. That strategy will take significant direction from implementing all measures to be taken to establish and protect hard edges to the development of the town including Reserving land.
- Relevant excerpts from the LNSS are paraphrased below. It demonstrates the importance of the need for the City of Busselton to position its community’s values into the future planning framework as opposed to that which simply might be assumed by the WAPC (headquartered in Perth).

“The Leeuwin-Naturaliste Sub-regional Strategy is an overarching strategic land use planning document outlining the Western Australian Planning Commission’s (WAPC) approach to future planning and development within the City of Busselton and the Shire of Augusta-Margaret River over the next 20 years.

The Strategy provides guidance to help the respective local governments implement State strategic priorities and inform local planning strategies and schemes so that robust planning decisions are made.

It also provides background for the proposed review of State Planning Policy 6.1 Leeuwin- Naturaliste Ridge, which covers the area west of Bussell Highway plus the full extent of the townsites located on Bussell Highway.

In particular, the Strategy plans for population and visitor growth to be accommodated through a combination of urban infill, already-planned greenfield development and potential new expansion areas. A number of sites throughout the sub-region are identified as Planning Investigation Areas, which will require further detailed investigation by the WAPC to determine their suitability for a potential change of use.”

(Ref <https://www.wa.gov.au/system/files/2022-02/Leeuwin-Naturalist-Sub-regional-Strategy.pdf>)

- The need to retain each settlement’s distinct sense of place, community and lifestyle as clearly communicated to candidates campaigning for recent election to the Council.
- The heightened risk of bushfire hazard due to climate change and the outcomes of the publication of State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP3.7) and its guidelines. (hence the need to prevent interconnected sprawl)
- The adverse impacts of increased human activity along the coast on the marine environment means offering an alternative activated node inland from the coast.
- The City of Busselton published a draft Local Planning Strategy for public consultation in March 2016 and subsequently sought WAPC endorsement. Further consideration of the Local Planning Strategy, by the WAPC, is delayed pending the finalisation of the Leeuwin Naturaliste sub-regional strategy.

- Matters of City concern discussed by the CoB Council in March 2023 appear to have to date fallen on deaf ears and relevant excerpts are noted below:

“...immediate term. The approach that the WAPC seems to have taken with the LNSRS modifications is to remove the option of identifying medium- and longer-term growth areas, with areas either identified for urban development in the nearer term, or not at all.

Turning to the second criteria, that of basic raw material needs, starting on page 189 of Attachment B, there is a discussion of basic raw material requirements for development at Vasse South. The report identifies that there is insufficient information to assess the criteria for Vasse South, but also then notes that; “An analysis of available datasets has identified that it is likely that significant amounts of fill will be required to support development...”. The same is, however, true for the other areas in the City assessed by the WAPC, and the report makes no attempt to identify or outline the nature of the ‘available datasets’.

One dataset that would have been available, however, is data identifying existing ground levels for all of the areas assessed. Whilst high resolution data is generally not available, it is clear that essentially all of the Vasse South area is at or above 5.0 metres AHD, with significant parts of the larger area assessed by the WAPC at or above 10.0 metres AHD. That is in significant contrast to Vasse North,...”

The 1:500 year inundation levels (increasing in frequency) will in time, compromise the current Busselton settlement node (and others) and thus to ensure safe continuity of local commerce, the new City will need to be developed on higher ground inland. Strategically, planning for a new city will avail the City a better option other than just to ‘Defend’, (i.e. allowing a staged withdrawal).

Early local aspiration into the planning structure will inform the planning of sewer and water and power servicing as those respective Agencies review their strategic planning. The City cannot afford to not to have its desires embedded in the broader planning structure and risk allowing the imposition of another 20 years of sprawl and infill to negatively impact the Local Planning Scheme currently being drafted.

OFFICER COMMENT

Officers support the requested notice of motion to convene a briefing and workshop between the Council and the relevant Department of Planning Lands and Heritage Officers in relation to the State Planning Framework and its influence and application on the regional and local planning framework in February 2024.

Planning at a local government level is informed and directed by the State Planning and Development framework – Attachment 16.5.1. The *South West Regional Blueprint* (2015) takes an aspirational view on change and social and economic development to 2050 by identifying key drivers for development and associated infrastructure needs at regional and local levels. The *South West Planning and Infrastructure Framework* (2015) provides the overarching strategic context for planning in the region to 2035.

Leeuwin-Naturaliste Sub-regional Strategy (LNSRS) provides the strategic direction for the Local Government for the implementation of the State planning policies and is considered the guiding framework in relation to land use, land supply, land development, environmental protection, infrastructure investment and the delivery of physical and social infrastructure for the region.

Settlement hierarchy in the City of Busselton is defined through the LNSRS (Attachment 16.5.2):

	Tier	Settlement	Description
1.1	Regional centre	Busselton	Offer a diverse range of high-order services and functions. Centre of economic activity, employment and population and generally provide comparative retail, higher-order education, recreation and health services
1.2	Major town	Dunsborough	Offer a level of service to accommodate the daily needs of their service population, with services relative to the population catchment
1.3	Town	Vasse	
1.4	Village	Yallingup	
1.5		Eagle Bay	
1.6	Tourist Node	Bunker Bay	Primarily accommodate overnight visitors with necessary infrastructure to facilitate this function.
1.7		Smiths Beach	

1.1 The *Busselton Regional Land Supply Assessment* identifies potential land supply projections sufficient for a resident population of approximately 44,900.

1.2 Dunsborough has developed rapidly in recent years and requires strategic consideration of the future form through development of an agreed vision and strategy which is currently absent in the *City's Local Planning Strategy (LPS)*.

The reason for this gap is, at the time of finalising the LPS, there was the expectation that this investigation and determination would occur through the development of a town site strategy for Dunsborough and a district level structure plan for the PIA prepared by the City and the WAPC respectively, within the *Leeuwin Naturaliste Sub-regional Strategy (LNSRS)*. The decision of the WAPC to remove these elements and opportunities from the LNSRS creates a level of uncertainty around what the identified PIA for Dunsborough might actually deliver.

1.3 Vasse has experienced extensive population growth in the past decade, and again would benefit from an agreed vision and supporting strategy, to define, in particular the Vasse South PIA.

1.4 The Yallingup settlement area is defined by the bounding National Park and Ocean with no prospect of expansion of the existing settlement area.

1.5 Future development of Eagle Bay is informed through the Eagle Bay Structure Plan (2007), but constrained by access to supporting infrastructure, environmental constraints, and bushfire accessibility.

1.6 and 1.7 Bunker Bay and Smiths Beach are small coastal tourism nodes, with single access routes. There is limited constrained opportunity for future development area expansion.

Planning at a local government level is directly influenced by the defined strategic direction within the State and Regional specific planning framework, policies, and strategies. To develop an agreed vision and strategy for the identified settlements within the municipal area, aligned with community aspirations requires broader community consultation and a collaborative approach between the City and Department of Planning Lands and Heritage.

16.6 Notice of Motion - Audit and Risk Committee

MOTION

That the Council:

1. Establishes an updated Terms of Reference for its Audit and Risk Committee (ARC); reflecting the Council resolution that all elected members are members of the ARC and that an external person shall also be appointed to it (once recruited); and adopting the Industry Model[^] with all of its optional clauses and additional clauses covering the specified at points a. to k. below and responding to issues specified for ARC consideration in the Council adopted (C23066/111) City of Busselton Local Government (Audit) Regulations 1996 Regulation 17 Review report (AMD Chartered Accountants, May 2023):
 - a. Existing ARC ToR clauses 3.3, 3.4, 3.5, 4, 5.2, 5.4, 5.5, 6, 7, 8, 9 shall remain as is (9 requiring the new Council resolution number).
 - b. Existing ARC ToR clauses be amended to:
 - i. 5.3 shall require agenda papers and notice to be given a 7 day minimum.
 - ii. 5.6 add "...or special meeting convened for that purpose".
 - c. Consider Risk reports presented at each ARC meeting,
 - d. ARC meeting agendas to include a standing item relating to updating on the status of actions previously tabled and the discussion of risk,
 - e. ARC meeting agendas to include a standing item relating to compliance and the effectiveness of compliance at the City.
 - f. Ensure internal and/or external audit contracts include an assessment of compliance and ethics risks in the development of the audit plan and in the conduct of audit projects.
 - g. Ensure no misuse of position through adequate disclosure of conflicts of interest.
 - h. Review the annual Compliance Audit Return.
 - i. ARC to inform itself through communication between key management of the effectiveness of the City's compliance and make recommendations for change as required.
 - j. ARC to consider recommending an internal audit function overseen functionally by the ARC and administratively by the CEO.
 - k. Use the OAG models where applicable (such as its framework (1) for developing the annual audit plan).
2. Resolves that the ARC will meet in February 2024 (or prior to the next pre-advertised meeting) to consider: an agenda structure, voice areas of portfolio interest, identify risks to then collectively be prioritised, learn of the current operational processing and reporting of risk and identify matters for the CEO to cover in his report to the following ARC meeting including (but not limited to) resourcing implications and an internal audit function#.

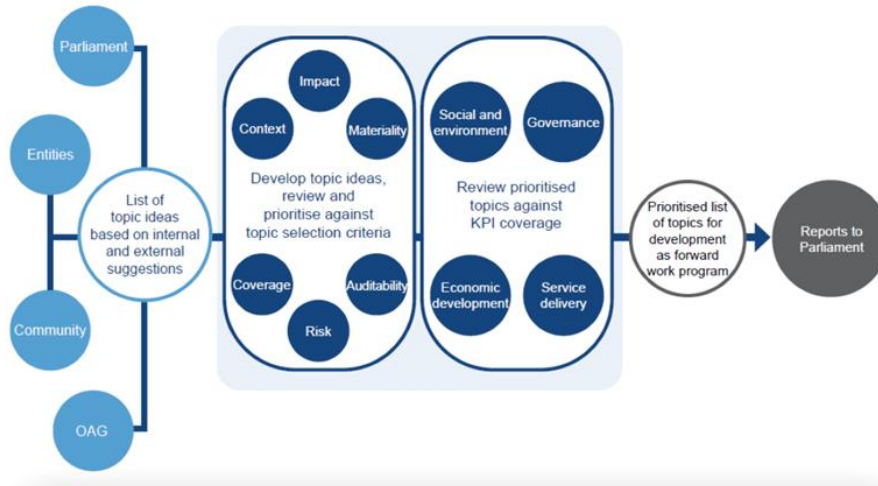
[^] Ref: pg 9-13 incl. https://www.dlgsc.wa.gov.au/docs/default-source/local-government/operational-guidelines/operational-guideline-9-the-appointment-function-and-responsibilities-of-audit-committess.pdf?sfvrsn=77bf5a06_1

Note the model states the internal audit function has an administrative reporting relationship to the CEO but a functional reporting relationship to the ARC and thus it will be important the ARC

considers this prior to and in conjunction with the proposal from the CEO due at the March meeting.

1. OAG Framework:

Our topic selection framework



NOTICE OF MOTION

Cr Andrew Macnish has given notice that at the Ordinary Council meeting on 31 January 2024 he will move the above motion.

REASONS

Background:

The Council is required under the LG Act to form an Audit Committee. Historically this Audit (and Risk) Committee has met twice per year and more recently four times per year to interact with the City’s independent financial auditor. In 2022/3, it was noted internally and externally there was a need for a more robust approach (“lack of audit maturity and resourcing”; ref Chair ARC; Cr Paul Carter) for the ARC to take. This would be assisted by provision of model guidelines, training and an internal audit function. In addition to not utilising its audit role to the fullest, there has been little or no formal coverage of risk.

In mid 2023, external industry accounting firm AMD were contracted to conduct a review of the appropriateness and effectiveness of the City of Busselton systems and procedures in relation to risk management, internal control and legislative compliance pursuant to Audit Regulation 17 requirements. The Council accepted the Review (C2306/111) and a summary of findings relating to the Audit and Risk Committee (ARC) are mentioned below. It is important the ARC responds and is seen to respond directly to these matters (and for this reason they have been included in the Terms of Reference).

It must be noted however, the AMD review’s terms of reference did not include any assessment of procedures involving the Council (its decision-making and oversight responsibilities and performance). In fact, of assessing the City’s internal operation it made the disclaimer below and thus the ARC will be needed to help fill this gap;

“Inherent Limitations

Due to the inherent limitations of any internal control structure, it is possible that fraud, error or non-compliance with laws and regulations may occur and not be detected. Further, the internal control structure, within which the control procedures that have been subject to review, has not been reviewed in its entirety and, therefore, no opinion or view is expressed as to its effectiveness of the greater internal control structure. This review is not designed to detect all weaknesses in control procedures as it is not performed continuously throughout the period and the tests performed on the control procedures are on a sample basis. Any projection of the evaluation of control procedures to future periods is subject to the risk that the procedures may become inadequate because of the changes in conditions, or that the degree of compliance with them may deteriorate.

We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, the City of Busselton management and personnel.

The review findings expressed in this report have been formed on the above basis.”

Matters for the ARC:

4.2.1	<i>Compliance Calendar</i>	<i>We recommend the City develop a centralised Compliance Calendar to be accessed and utilised by City staff as required</i>
4.2.2	<i>Audit and Risk Committee</i>	<p><i>We recommend:</i></p> <ul style="list-style-type: none"> • <i>Risk reports be presented at each Audit and Risk Committee meeting.</i> • <i>Audit and Risk Committee meetings agendas include a standing item relating to updating on the status of actions previously tabled, and the discussion of risk: and</i> • <i>Audit and Risk Committee meeting agendas include a standing item relating to compliance and the effectiveness of compliance at the City.</i>
4.2.3	<i>Internal Audit</i>	<p><i>The Department of Local Government, Sport and Cultural Industries guidelines recommend an internal audit function be established incorporating an internal audit program which is reassessed annually.</i></p> <p><i>We recommend the City consider an internal audit function overseen by the Audit and Risk Committee.</i></p>

“We recommend the Risk Management Report:

- *Be reviewed and updated on a period basis. A comprehensive risk identification process may be required to be completed across all departments;*
- *Clear reporting requirements be documented within the Risk Framework and these reporting requirements be complied with. Ideally this would involve risk reports being presented to the Audit and Risk Committee on a quarterly basis to report emerging risks and ensure management/ Council are notified on how risks are being managed.*
- *WHS risk management be matured through the implementation of an online centralized system;*
- *Corporate risk be managed by a dedicated risk officer; and*
- *The re-established Risk Management Committee undertake the annual evaluation as required by the Terms of Reference.”*

Comment/Reasons

It is important for the Council's ARC to progress the now adopted recommendations from the Review and given the ARC has recently been expanded (recognising the need for it to respond and quickly 'mature' the City's audit and risk efforts to date), its Terms of Reference (ToR) need recasting. Guiding this is the reference the AMD report makes to the Department of Local Government Sport and Cultural Industries' guidelines. Accordingly, the proposed motion addresses this advice directly by utilising the exact model text (ref; link).

In addition, it must be noted the Office of Auditor General (OAG) which guides the City's annual compliance report has now encouraged the utilisation of performance auditing as a necessary tool to ensure good governance is not only in place but seen to be in place.

Finally, the ARC's ToR must respond to the criticism there has not been, nor currently is an annual audit plan. This will need to be complied by the elected members of the ARC as a matter of priority for prioritising and an assessment of resourcing made before annual budget discussions commence. This discussion will inherently weigh up the need for and extent of an internal audit function (as raised in the model terms/guidelines). Occurring in parallel to the ARC members consideration of matters potentially the scope of internal audit, the CEO has been requested to report on what might form such a scope from the organisational administrative perspective (due to report in March 2024).

Appreciating this and recognising the scope and subsequent contribution the Audit and Risk Committee (ARC) can make in providing recommendations to the Council, the historical Terms of Reference (ToR) are no longer adequate (other than perhaps clause 8) and it is overdue that a local government the size of the City of Busselton being of Band 1, meets the industry and community expectation to adopt the model ToR in commencing its pursuit of best practice.

Additionally, upgrading the new now will ToR will facilitate the need for the ARC to familiarise itself and position itself to best receive and review the internal audit function proposal from the CEO in March.

OFFICER COMMENT

Officers recommend that the Council support the officer recommendation in Item 14.3 of the Council agenda for the 31 January 2024 Ordinary Council meeting which proposes updated Terms of Reference for the Audit and Risk Committee and deals with similar matters to those set out in this Notice of Motion.

The proposed terms of reference in Item 14.3 primarily utilise the *Audit in Local Government – Local Government Operational Guidelines* published by the Department of Local Government (Department Guidelines) and have considered the relevant legislative framework, being the Act and *Local Government (Audit) Regulations 1996* as well as the existing terms of reference, the *Western Australian Public Sector Audit Committees – Better Practice Guide* published by the Office of the Auditor General, and the terms of reference of various Western Australian local government audit committees.

The Department Guidelines were drafted for the local government context but were last revised in September 2013 and therefore do not necessarily deal with all matters in a contemporary manner. They also do not consider the circumstances, resourcing and strategic priorities of each local government. The proposed terms of reference in Item 14.3 have therefore been amended to be more contemporary (including reference also to risk management) and appropriate to the City's

context. Officers do not support adopting the Departmental Guidelines as they stand in full for the reasons discussed above.

Officers do agree that improving the effectiveness of audit and risk management at the City is a worthy objective of the Council. The proposed terms of reference in Item 14.3 were developed after conducting a detailed review and address matters such as risk management, internal audit and the appointment of an independent member in the City of Busselton's context, and are as such recommended by officers.

Officers are amenable to amending the proposed terms of reference in Item 14.3 to state that notice and agenda papers are to be given a minimum of seven days (i.e. five working days) prior to the Audit and Risk Committee meeting, as proposed by Cr Macnish's notice of motion.

The report for Item 14.3 notes that further reports relating to risk management and internal audit will be presented to the Audit and Risk Committee at its March 2024 meeting, outlining background in terms of the City's current and previous approaches, and a path forward and resourcing for improvements. A briefing with Councillors could also be considered in late February 2024 to ensure that all Councillors have the relevant background prior to the scheduled Committee meeting. Officers believe a briefing would be more constructive than an additional Committee meeting for this purpose.