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## CITY OF BUSSELTON

### MINUTES FOR THE COUNCIL MEETING HELD ON 14 MARCH 2018

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## MINUTES

MINUTES OF A MEETING OF THE A MEETING OF THE BUSSELTON CITY COUNCIL HELD IN THE COUNCIL CHAMBERS, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 14 MARCH 2018 AT 5.30PM.

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

The Presiding Member opened the meeting at 5.30pm.

### 2. ATTENDANCE

#### Presiding Member:

Cr Grant Henley Mayor

#### Members:

Cr John McCallum Deputy Mayor  
Cr Ross Paine  
Cr Lyndon Miles  
Cr Rob Bennett  
Cr Paul Carter  
Cr Robert Reekie  
Cr Kelly Hick

#### Officers:

Mr Mike Archer, Chief Executive Officer  
Mr Oliver Darby, Director, Engineering and Works Services  
Mr Paul Needham, Director, Planning and Development Services  
Mr Cliff Frewing, A/ Director, Community and Commercial Services  
Mr Tony Nottle, Director, Finance and Corporate Services  
Mrs Katie Banks, Executive Assistant to Council

#### Apologies

Cr Coralie Tarbotton

#### Approved Leave of Absence

Nil

#### Media:

“Busselton-Dunsborough Times”

#### Public:

1

### 3. PRAYER

The prayer was delivered by Reverend Melusi Sibanda from the Dunsborough Anglican Church.

**4. PUBLIC QUESTION TIME****Response to Previous Questions Taken on Notice**

Nil

**Public Question Time**

Mr Simon Marden of 1 Furphy Place, West Busselton asked Councillors if they were aware of the annual costs associated with the registration and ownership of holiday homes and outlined his concerns in relation to Council considering applying the MERG levy to holiday homes as mentioned in the Officer Comment of agenda Item 10.1 (page 10).

The Mayor informed Mr Marden that the matter he raised is currently being discussed by the Council and will be brought to Council for consideration in the future. The issue surrounds the notion that holiday homes also benefit from marketing and events within the region and that the inclusion of holiday homes in the MERG levy is to bring all accommodation providers up to a level playing field.

**5. ANNOUNCEMENTS WITHOUT DISCUSSION****Announcements by the Presiding Member**

Nil

**Announcements by other Members at the invitation of the Presiding Member**

Nil

**6. APPLICATION FOR LEAVE OF ABSENCE**

Nil

**7. PETITIONS AND PRESENTATIONS**

Nil

**8. DISCLOSURE OF INTERESTS**

The Mayor noted that a declaration of financial interest had been received from:

- Cr Robert Bennett in relation to Agenda Item 10.1 Policy and Legislation Committee - 27/02/2018 - LOCAL PLANNING POLICY - HOLIDAYHOMES
- Cr Kelly Hick in relation to Agenda Item 10.1 Policy and Legislation Committee - 27/02/2018 - LOCAL PLANNING POLICY – HOLIDAYHOMES
- Chief Executive Officer, Mike Archer in relation to Agenda Item 15.1 Councillors' Information Bulletin

The Mayor advised that in accordance with the Local Government (Rules of Conduct) Regulations 2007 these declarations would be read out immediately before Items 10.1 and 15.1 were discussed.

**9. CONFIRMATION AND RECEIPT OF MINUTES****Previous Council Meetings**9.1 Minutes of the Council Meeting held 28 February 2018**COUNCIL DECISION****C1803/036**

Moved Deputy Mayor McCallum, seconded Councillor R Reekie

That the Minutes of the Council Meeting held 28 February 2018 be confirmed as a true and correct record.

**CARRIED 8/0****Committee Meetings**9.2 Minutes of the Policy and Legislation Committee held 27 February 2018**COUNCIL DECISION****C1803/037**

Moved Councillor K Hick , seconded Councillor P Carter

That the Minutes of the Policy and Legislation Committee held 27 February 2018 be confirmed as a true and correct record.

**CARRIED 8/0****ITEMS BROUGHT FORWARD AND ADOPTION BY EXCEPTION RESOLUTION**

At this juncture the Mayor advised the meeting that with the exception of the items identified to be withdrawn for discussion, that the remaining reports, including the Committee and Officer Recommendations, will be adopted en bloc.

**Items Brought Forward For Discussion****En Bloc Motion****COUNCIL DECISION/COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION****C1803/038**

Moved Councillor P Carter, seconded Deputy Mayor McCallum

That the Committee and Officer Recommendations in relation to the following agenda items be carried en bloc:

10.2 Policy and Legislation Committee - 27/02/2018 - PUBLIC ARTWORK POLICY

11.2 SCHEME AMENDMENT 21 TO LOCAL PLANNING SCHEME 21 AND MODIFIED STRUCTURE PLAN - LOT 11 AND PORTION LOT 803 CHAPMAN HILL ROAD, BOVELL - CONSIDERATION FOR FINAL APPROVAL

**CARRIED 8/0****EN BLOC**

## 10. REPORTS OF COMMITTEE

### 10.2 Policy and Legislation Committee - 27/02/2018 - PUBLIC ARTWORK POLICY

<b>SUBJECT INDEX:</b>	Policies, Plans and Procedures
<b>STRATEGIC OBJECTIVE:</b>	A community with access to a range of cultural and art, social and recreational facilities and experiences.
<b>BUSINESS UNIT:</b>	Community Services
<b>ACTIVITY UNIT:</b>	Community Services
<b>REPORTING OFFICER:</b>	Cultural Development Officer - Jacquie Happ
<b>AUTHORISING OFFICER:</b>	Director, Community and Commercial Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Attachment A - Table of Submissions Public Artwork Policy⇒ Attachment B Attachment B - Public Art Policy showing changes⇒

**This item was considered by the Policy and Legislation Committee at its meeting on 27 February 2018, the recommendations from which have been included in this report.**

### PRÉCIS

The purpose of this report is to seek Council's approval for the Public Artwork Policy (PAP) which will facilitate the management of outdoor sculptures (Public Artwork Collection) in public places. The draft Policy was considered by the Policy and Legislation Committee at its Meeting on 30th November 2017 when it was adopted for the purposes of public comment.

### BACKGROUND

The importance of public artwork is widely acknowledged to reflect the cultures and lifestyles of a community, create a sense of place, add vibrancy to a public area and allow people to engage on many different levels. Public Artwork is defined as outdoor artwork located in public places and includes sculptures, bespoke street furniture, and monuments or memorials as distinct from the Art Collection which refers specifically to artwork that is on display or in storage and owned by the City.

The principles of the City's Public Artwork Policy are to:

- promote civic, community and cultural identity by introducing public artworks which makes streets, open spaces and buildings more locally distinctive;
- enhance the sense of place by encouraging public art forms which reinforce and highlight early settlement and Aboriginal history, cultural heritage and contemporary life;
- encourage community reflection, inspiration, celebration and well-being;
- improve visual amenity and the appearance of places by using public art to screen unattractive views and add interest;
- support regional art production where possible by contracting locally-based artists to create artworks;
- encourage the use of a diverse range of traditional and contemporary media and technologies; and
- recognise the importance of the role of art in public places.

The draft Policy was considered by the Policy and Legislation Committee at its Meeting on 30<sup>th</sup> November 2017 when the Committee adopted the following:

That the Council:

1. approves the advertising of the Public Art Policy for a period of 21 days for public comment and adopts the Policy subject to no adverse comments being received;
2. reviews the Public Art Policy in 12 months time.

This report outlines the public comment process and identifies minor changes to the policy considered in November 2017.

## **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.

Local Government (Financial Management) Regulations amended 1 July 2012 mandates the valuation of non-current assets at Fair Value.

## **RELEVANT PLANS AND POLICIES**

Public Artwork plays a key role in delivering the City's Social Plan 2015 – 2025 in providing a welcoming community with vibrant and attractive places and spaces where local heritage and culture is valued. In particular the Social Plan 2015-2025 identifies the need to facilitate the development of arts and culture by the continued implementation of the Cultural Plan and Local Cultural Planning Strategy (LCPS).

The City of Busselton adopted the LCPS in August 2011. The aim of the strategy is to conserve the key cultural elements of the City's towns and rural areas and to maintain these elements over time.

The City's Cultural Plan was adopted in 2005 and provides recommendations on the future directions of arts and culture in the City of Busselton and encourages the development of a collective community cultural vision and plan.

Developer Contribution Policy: 6B Percent for Art Provisions require eligible development proposals to provide public artworks on the site of development or on crown land immediately adjacent to the site, in a location approved by the City.

## **FINANCIAL IMPLICATIONS**

### *Acquisitions*

Currently the City commissions public artworks on a case by case basis. Others are funded through external funding and community or corporate contributions.

### *Maintenance*

The current annual maintenance cost of public artworks is difficult to ascertain as it is not separately costed. It is estimated that costs range from \$4,000 to \$15,000 per annum, or an average of \$7,000 per annum is spent each year on what is largely reactive maintenance. It is therefore recommended a separate, annual Public Artwork Maintenance budget of \$10,000, is established from the 2018/19 financial year budget. This asset maintenance budget is regarded as small in comparison to other maintenance programs within the City.

### *Valuation and Condition Assessment*

A Valuation and Condition Assessment Report of the City's Art Collection is undertaken every three years by a professional consultant. The report ascertains maintenance requirements including if the art needs priority attention, conservation or remedial works or needs to be removed and provide a more accurate valuation. To date the City's Public Artwork Collection has not been valued.

The most recent Art Collection valuation was completed in 2016 at a cost of \$3,950 and the next is scheduled for 2019. A Valuation and Condition Assessment Report for the Public Artwork Collection has been quoted at \$3,900. A discounted rate is available if both the Art Collection and the Public Artwork Collection are undertaken at the same time with the combined cost estimated to be \$7,215.

As such, it is recommended that an arts specialist/consultant be engaged to undertake a Valuation and Condition Assessment Report for both Public Artwork and Art Collection in 2018/19 financial year and every three (3) years thereafter.

### **Long-term Financial Plan Implications**

It is recommended that an annual budget of \$10,000 per annum is implemented for maintenance of the Public Artwork Collection.

It is recommended that the next Valuation and Condition Assessment Report commissioned includes both the Public Artwork Collection and the Art Collection, and that it is undertaken in 2018/19 financial year with an additional budget allocation for the Public Artwork Collection component of an estimated \$3,265, and every three (3) years thereafter at an estimated combined cost of \$7,215.

### **STRATEGIC COMMUNITY OBJECTIVES**

This policy is consistent with fostering the following strategic objective:

Key Goal Area 1 Community

- 1.3 A community with access to a range of cultural and art, social and recreational facilities and experiences.

### **RISK ASSESSMENT**

An assessment of the potential implications of implementing the officer recommendation have been undertaken using the City's risk assessment framework, and no risks were identified where the residual risk, once controls are considered, is medium or greater.

### **CONSULTATION**

The PAP was open to public comment for a period of 21 days from 20 December 2017 to 12 January 2018. It was advertised in the Busselton Dunsborough Mail on the 20 and 27 December 2017 and 3 January 2018 and emailed to artists and relevant community groups so that they were fully informed of the draft policy.

### **OFFICER COMMENT**

The PAP was developed as the City has seen an increasing growth in the sculptures in the Public Artwork Collection it has acquired in numerous ways including: commissions, developer contributions, donations, loans, prizes and community art projects. The City is required to manage and control public artworks which are located on City owned or managed properties and public spaces. The PAP provides guidance on the lifecycle of artwork across the following areas:

- Acquisition
- Consultation
- Maintenance
- Deaccessioning
- Responsibilities



Five submissions were received from the Public Consultation period see Attachment A: Table of Submissions Public Artwork Policy. All submissions were generally supportive of the PAP, and offered recommendations that led to the following changes in the Policy:

- i) Definition of Artist to allow emerging artists works to be acquired;
- ii) Definition of street furniture altered so commissioned works are considered to be Public Art; and
- iii) Inclusion of signage on artworks.

In addition, a slight change has been made to the name and contents of the policy where reference to the word “Art” has changed to “Artwork”.

These suggestions have now been incorporated in the revised draft policy which is shown at Attachment B.

## **CONCLUSION**

Officers recommend that the updated Public Artwork Policy is adopted by Council and an annual allocation of \$10,000 and a 3 yearly allocation of \$7,200 (exclusive of GST) are included from the 2018/19 budget to implement an asset maintenance program and Public Artwork Collection and Art Collection Valuation and Condition Assessment.

## **OPTIONS**

The City can continue to accept artworks on a case by case basis without a recognised process or policy and continue to provide a more reactive approach to the maintenance of its public artwork infrastructure.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Following Council approval, the PAP can be adopted immediately and finances included in the 2018/19 budget development process.

## **COUNCIL DECISION/COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION**

**C1803/039** Moved Councillor P Carter, seconded Deputy Mayor McCallum

That the Council:

1. Approves the Public Artwork Policy as shown in Attachment B;
2. Considers as part of the 2018/2019 budget adoption an allocation of \$10,000 for an annual maintenance program; and
3. Considers as part of the 2018/2019 budget adoption an allocation of \$7,200 for a Public Artwork Collection and Art Collection Valuation and Condition Assessment Report.

**CARRIED 8/0**

**EN BLOC**

11.2 SCHEME AMENDMENT 21 TO LOCAL PLANNING SCHEME 21 AND MODIFIED STRUCTURE PLAN - LOT 11 AND PORTION LOT 803 CHAPMAN HILL ROAD, BOVELL - CONSIDERATION FOR FINAL APPROVAL

<b>SUBJECT INDEX:</b>	Town Planning Schemes and Amendments
<b>STRATEGIC OBJECTIVE:</b>	Planning strategies that foster the development of healthy neighbourhoods that meet our needs as we grow.
<b>BUSINESS UNIT:</b>	Strategic Planning and Development Services
<b>ACTIVITY UNIT:</b>	Strategic Planning and Development Services
<b>REPORTING OFFICER:</b>	Principal Strategic Planner - Louise Korovesi
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Published Under Separate Cover Confidential Legal Advice Attachment B Schedule of Modifications⇒ Attachment C Location Plan⇒ Attachment D Existing and Proposed Zoning⇒ Attachment E Proposed Structure Plan⇒ Attachment F Endorsed Structure Plan⇒ Attachment G BAL Contour Map⇒ Attachment H Extract - Draft Local Planning Strategy⇒ Attachment I Schedule of Submissions⇒

## PRÉCIS

The Council is requested to consider adopting for final approval Amendment 21 to *Local Planning Scheme 21* (LPS21). The intent of the Amendment is to shift the land use/development focus for Lot 11 and portion of Lot 803 Chapman Hill Road, Bovell away from motor vehicle and marine sales to a more conventional light industrial and service commercial development area. Modifications to the endorsed Ambergate Automotive Structure Plan are also proposed that reflect land use changes sought through the Amendment.

Amendment 21 was adopted by the Council for public consultation on 12 April 2017. The advertised version of the Amendment responded to issues that had arisen from planning decisions and subsequent appeals to the State Administrative Tribunal that could similarly occur in relation to the land the subject of this Amendment.

Submissions were received from AUI (Busselton Central) and Realview Holdings (West Street) and in response the City obtained legal advice which is provided at **Attachment A** in full under separate confidential cover.

Officers are recommending that Amendment 21 be adopted by the Council for final approval in accordance with further changes proposed that are reflective of the legal advice received (and as set out in the Schedule of Modifications provided at **Attachment B**) and referred to the WAPC/Hon. Minister for Planning for final endorsement.

## BACKGROUND

The proposal comprises a Scheme amendment and modifications to the endorsed Ambergate Automotive Structure Plan. The subject land is bound by the Busselton Bypass, Chapman Hill Road and the Vasse Diversion Drain and is 24.5ha in area (**Attachment C**). The land is flat and largely cleared, apart from scattered mature paddock trees and is used for broadacre grazing.

Land north of the Busselton Bypass is zoned and mostly developed for light industrial and service commercial purposes. West of the Vasse Diversion Drain the land is subject to the Ambergate North Structure Plan and is zoned for urban development.

Amendment 179 (Gazetted in 2012) to the City's previous Town Planning Scheme No. 20 and the Ambergate Automotive Structure Plan introduced the current planning framework applicable to the land, the purpose of which was to facilitate the development of a new location specifically for the long term growth and expansion of motor car dealerships, marine sales and complementary allied service commercial businesses. Amendment 179 introduced two precincts (corresponding to Special Provision Areas 47 & 48) and specific controls over permissible land uses within each. Special Provision Area 47 was intended to primarily accommodate motor vehicle and marine sales premises. Special Provision Area 48 was intended to accommodate a broader, but still relatively restricted, range of service commercial land uses complementary to the core automotive/marine sales precinct. Since the land was rezoned there has been little apparent interest from car or boat dealerships to relocate to the area. The overall intent of this Amendment, therefore, is to shift the land use focus away from specialist motor vehicle and marine sales to conventional light industrial and service commercial development. This will not, however, preclude motor vehicle and/or marine sales dealerships from relocating to, or developing on, the subject land.

A range of environmental and other matters (traffic and parking, geotechnical assessment, servicing, local water management strategy and fire management) were addressed as part of the assessment of Amendment 179 and the Ambergate Automotive Structure Plan. The Local Water Management Strategy and Transport Assessment Report have been updated to reflect the proposed changes and a Bushfire Management Plan has been provided, however it is considered that the proposal does not raise any significant issues beyond that contemplated within Amendment 179 and the associated structure plan.

Each element of the proposal is outlined below under appropriate subheadings.

### **Scheme Amendment**

The Scheme Amendment proposes to –

1. Rezone a 4ha portion of Lot 803 Chapman Hill Road, Busselton from 'Agriculture' to 'Special Purpose (Ambergate Industrial/Service Commercial Development Area)';
2. Delete Special Provision Area 47 from Schedule 3 'Special Provision Areas';
3. Amend the boundary of Special Provision Area 48 to include the whole of the subject land; and
4. Amend Schedule 3 Special Provision Areas to include 'Medical Centre' and 'Convenience Store' as permitted land uses for Special Provision Area 48.

Existing and proposed zoning maps are provided at **Attachment D**.

### **Draft Modified Structure Plan**

The draft Ambergate Industrial/Service Commercial Area Structure Plan is provided at **Attachment E**. The proposal retains key elements of the endorsed Structure Plan (provided at **Attachment F**) including:

- A minimum 30m landscape and drainage buffer to the Busselton Bypass;
- A minimum 50m landscape, drainage and fire management buffer to the Vasse Diversion Drain (the total POS/buffer/drainage area is 6.9ha);
- A circulating internal road with service road frontages to limit access to Chapman Hill Road and the Busselton Bypass;
- Rear lane with access easement along the rear of the southern portion of the land;
- Limited vehicle access points from Chapman Hill Road and the future Ambergate North entry road (that will form the southern extent of the development area);

- A requirement for the preparation of a local development plan to guide detailed design matters such as development setbacks, integrated parking and access, landscaping and built form for lots fronting Chapman Hill Road; and
- Estimated yield of 39 lots ranging in size from 3,200m<sup>2</sup> to 4,000m<sup>2</sup> +.

### Advertised Changes to Schedule 1 – ‘Interpretations’ and Schedule 2 – ‘Additional Uses

The advertised changes to Schedule 1 – ‘Interpretations’ and Schedule 2 – ‘Additional Uses’ are as follows:

#### 1. Schedule 1 – ‘Interpretations’

- The definition of ‘Medical Centre’ as it currently is in LPS21 – *“means consulting rooms and professional accommodation for duly qualified and registered medical practitioners, dentists, physiotherapists, optometrists, chiropodists and pharmacists”* to be replaced with the Model Scheme Text definition of ‘Medical Centre’ as set out in the *Planning and Development (Local Planning Schemes) Regulations 2015*, which reads as follows -

*“Medical Centre’ means “premises other than a hospital used by 3 or more health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care”.*

- Delete the following definitions – ‘Discount Department Store’ and ‘Supermarket’.

#### 2. Schedule 2 – ‘Additional Uses’

Amend ‘Additional Use 64’ by inserting definitions for ‘Discount Department Store’ and ‘Supermarket’ to read as follows –

No.	PARTICULARS OF LAND	LAND USES PERMITTED/SPECIFIED	CONDITIONS
A64	Pt Lot 17 West Street, West Busselton	Discount Department Store	<p>1. The additional use specified shall be deemed to be a “D” use for the purposes of Part 4 of the Scheme.</p> <p>2. Development shall be in accordance with a Land Use Concept Plan adopted by the Council.</p> <p>3. The additional use specified shall comprise a single discount department store with a gross leasable floor area of not less than 5,000m<sup>2</sup> and not more than 8,000m<sup>2</sup>. For the purpose of this clause only ‘Discount Department Store’ means a premises wherein a substantial range of consumer goods are kept in a substantial number of different departments and offered for sale by a single retailer but does not include a supermarket nor a supermarket component’ and ‘Supermarket’ means premises used to sell a range of food and household convenience goods by retail but does not include a discount department store, showroom or takeaway food outlet.’</p>

### **Proposed Changes to Schedule 3 – ‘Special Provision Areas’**

The term ‘Research and Development Facility’ is listed as a permissible land use under Special Provision Area 43. The term is defined in Schedule 1 – ‘Interpretations’ of LPS21 but is not listed in Table 1 - Zoning Table of the Scheme.

Officers are recommending that this anomaly is rectified by proposed changes to Special Provision Area 43 as follows –

- i. Delete ‘Research and Development Facility’ from Schedule 1 – ‘Interpretations’.
- ii. Amend Schedule 3 – ‘Special Provision Areas’ in respect of ‘Special Provision Area 48’ by inserting the following special provision –

*5. For the purpose of Special Provision Area 48 ‘Research and Development Facility’ means a building or buildings predominantly used for tertiary industrial activity involved in the research and development of goods and services, and may include small manufacturing that is directly associated with, and ancillary to, the predominant use’.*

The proposed changes are contained in the Schedule of Modifications at **Attachment A**. Other changes proposed as a result of advertising Amendment 21 are discussed under the ‘Consultation’ and ‘Officer Comment’ sections of this report.

### **Local Water Management Strategy**

The Local Water Management Strategy (LWMS) has been updated to include the portion of Lot 803 forming part of the amendment proposal. The LWMS states that fill on lots will be required to maintain an adequate separation to groundwater. The stormwater and drainage management system will comprise on lot storage, bioretention gardens within road reserves, swales and constructed wetlands within buffer areas, with approximately 95% of stormwater to be detained and treated onsite.

### **Transport Assessment Report**

The Transport Assessment Report has been updated to address the Amendment and proposed modifications to the Structure Plan. The assessment also considered the findings of the traffic impact assessment for Ambergate North, with particular reference to vehicle movements likely to be generated by Ambergate North at full development for the future entry road from Chapman Hill Road.

At full development the structure plan area is calculated to generate 3,926 vehicle movements per day. Assessment of the surrounding road network indicates that sufficient capacity exists to cater for forecast traffic movements that would result from the prospective development of the subject land. Access to the site is calculated to operate at appropriate levels of service during peak periods, including the future Ambergate North entry road and Chapman Hill Road intersection.

### **Bushfire Management Plan**

A minor portion of the subject land is designated as being bushfire prone and WAPC *State Planning Policy 3.7 – Planning Bushfire Prone Areas 2015/Guidelines for Planning in Bushfire Prone Areas 2017* requires the preparation of a Bushfire Management Plan (BMP) that includes a bushfire attack level (BAL) assessment to determine indicative acceptable BAL ratings, the identification of any bushfire hazards arising from the BAL contour map and assessment against bushfire protection criteria.

The key findings of the BMP are summarised as follows –

- The subject land has a moderate hazard level arising from existing and predominant grassland/pasture and scattered paddock trees. Vegetation within the adjoining Busselton Bypass road reserve and on land to the west of the Vasse Diversion Drain is assessed as an extreme hazard level.
- The effective slope of the site is flat.
- A 21m asset protection zone (to contain 'low threat vegetation and a proposed road servicing lots adjacent to the Busselton Bypass and Chapman Hill Road) separating areas within the public open space to be revegetated for environmental and landscape buffer purposes and the developable area.
- The BAL contour plan (provided at **Attachment G**) demonstrates that the whole of the developable area within the subject land will have a BAL-29 rating or lower and is therefore suitable for development.

## **STATUTORY ENVIRONMENT**

The key elements of the statutory environment with respect to this proposal are set out in the *Planning and Development Act 2005*, *Planning and Development (Local Planning Schemes) Regulations 2015* and the relevant objectives, policies 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*, which came into operational effect on 19 October 2015, identifies 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.

The new Regulations provide separate processes for the approval of scheme amendments and structure plans, adherence to which would advance the proposed Structure Plan ahead of the Amendment. However as the Structure Plan is reliant upon the change in zoning proposed in the Amendment and the nature of the proposal supports their assessment in parallel, the Structure Plan and Amendment are being progressed concurrently. Progression of the proposed Structure Plan will therefore assume the process and timeframes associated with the Amendment.

### **Local Planning Scheme No. 21**

The land is zoned 'Special Purpose (Ambergate Automotive Development Area)' and is within Special Provision Areas 47 and 48 pursuant to Schedule 3 of LPS21. The Scheme sets out a broad objective for each special provision area and establishes land use permissibilities within each.

## **RELEVANT PLANS AND POLICIES**

The key policies relevant to the proposal are the *Draft Local Planning Strategy* and the *Local Commercial Planning Strategy*. Each is discussed below under appropriate subheadings.

### **State Planning Policy 3.7: Planning in Bushfire Prone Areas and Guidelines for Planning in Bushfire Prone Areas 2015**

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 'bushfire prone' by the Fire and Emergency Services (FES) 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 key elements of the Guidelines relevant to the proposal are:

- Element 1: Location of Development; and
- Element 2: Siting of Development.

The intent of Element 1 is to ensure that the subdivision, development or land use is located in areas with the least possible risk from bushfire, to help minimise risk to people, property and infrastructure. Element 2 intends to ensure that the siting of development minimises the level of bushfire impact.

#### **Draft Local Planning Strategy**

The *Draft Local Planning Strategy* (LPS) identifies Lot 11 Chapman Hill Road as current/existing Industrial/Service Commercial Area 4 'Chapman Hill Road (1)' and notes that the area is already zoned and structure planned with particular emphasis on accommodating automotive-related development. Issues highlighted for consideration include water quality issues given the land's proximity to the Vasse River and the Vasse Diversion Drain and important heritage assets adjacent to the subject land.

The draft LPS identifies Lot 803 as 'Reserves and Open Space' and as being traversed by a 'Planned Potential Strategic Road'. This future road is one of the main distributor roads identified on the endorsed structure plan for Ambergate North that will ultimately form a strategic east-west road link between Rendezvous Road at Queen Elizabeth Avenue and Vasse Highway, thus connecting the City's existing and planned urban growth areas of Ambergate North, Bovell and Yalyalup (Provence).

The 'Planned Potential Strategic Road' also forms the southern boundary of land identified by the draft LPS as medium term Industrial/Service Commercial Area 7 'Chapman Hill Road (2)', which is located opposite the subject land. An extract of the draft LPS in relation to the subject land is provided at **Attachment H**.

The draft LPS was adopted for final approval by the Council in September 2016 and is currently pending endorsement by the WAPC. The resolution of the Council also contained recommended modifications to the draft LPS, including amending the draft LPS map to include part of Lot 803 within current/existing Industrial/Service Commercial Area 'Chapman Hill Road (1)', consistent with this Amendment.

#### **Local Commercial Planning Strategy**

The *Local Commercial Planning Strategy* considered the issue of location of car sales uses and recommended that Lot 11 Chapman Hill Road be identified for potential future service commercial development, subject to more detailed planning and consultation. The site was previously considered to have strategic merit for service commercial development and in particular for the automotive industry (as exemplified by Amendment 179 that zoned the land for those purposes in 2012) due to its proximity and location contiguous to, and compatibility with, industrial and service commercial activity in the Strelly Street industrial area.

## FINANCIAL IMPLICATIONS

There are no direct financial implications arising from the recommendations of this report.

### Long-term Financial Plan Implications

Nil

## STRATEGIC COMMUNITY OBJECTIVES

The Officer Recommendation is consistent with community objective 2.2 of the City's *Strategic Community Plan 2017*, which is – 'Planning strategies that foster the development of healthy neighbourhoods that meet our needs as we grow'.

## RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identified 'downside' risks only, rather than upside risks as well. The implementation of the Officer Recommendation will involve the referral of the Amendment and draft structure plan to the WAPC, with a recommendation that the Amendment be modified in accordance with the Schedule of Modifications and considered for final approval. In this regard, there are no significant risks identified.

## CONSULTATION

The Amendment was advertised for 42 days ending 6 September 2017. Five government agency and two public submissions were received. A Schedule of Submissions is provided at **Attachment I**. Of the five government agency submissions received, four raised no objection. The Department of Fire and Emergency Services (DFES) submission raised a matter that is normally dealt with at subdivision stage being maintenance requirements for the public open space to ensure the continuation of the BAL-29 rating for future development. The BMP has now been updated to address this matter.

The two public submissions received related to the proposed changes to Additional Use 64 and the key points raised are –

- The A64 area should be expanded to incorporate the whole of the of the West Street site (i.e. Lots 173 – 182).
- 'Supermarket' and 'Pharmacy' should be included as permissible land uses as part of A64 so that the existing land uses do not become 'non-conforming uses'.
- The intent of the proposal appears to be providing greater clarity and certainty to LPS21 such that 'discount department store' and 'supermarket' would fall within the definition of 'Shop' pursuant to Schedule 1 – 'Interpretations', however further planning and legal review by relevant parties should occur.

The matters relating to A64 are discussed under the 'Officer Comment' section of this report.

## OFFICER COMMENT

Amendment 21 is primarily concerned with future service commercial land to the south of the Busselton Bypass and an objective to shift the land use/development focus away from motor vehicle and marine sales to a more conventional light industrial/service commercial development area. No changes to this aspect of the Amendment are being recommended.



In response to issues that have arisen from planning decisions and subsequent appeals in the State Administrative Tribunal and Supreme Court that relate to development on the West Street site, however, the amendment also now seeks to close what was in effect a 'planning loophole' that would potentially allow for approval for a supermarket or department store on land not within a town/city centre location (and thus clearly contrary to current strategic planning direction), including the land the subject of Amendment 21.

Officers are therefore now recommending modifications to Amendment 21 (as advertised) in response to those matters raised in submissions received in relation to Additional Use 64 (A64) and the West Street commercial site. These modifications reflect legal advice received by the City and are set out in the Schedule of Modifications (**Attachment B**). Adoption of the modifications will, in effect, rationalise and better validate the approved land uses at West Street (i.e. Kmart would now be wholly contained within the boundary of A64 and the operational approvals for both Kmart and Aldi would be confirmed).

Furthermore, if the boundary of A64 were to be expanded to the extent put forward in the public submissions it would allow for expansions of the currently approved discount department store and supermarket and/or pharmacy floor space, as well as potentially allowing for one or more additional, new supermarket operator(s).

There is already one vacant supermarket premises in the City Centre, with two additional new operators seeking sites, as well as one operator seeking a larger site. If one or more of those was to go to the West Street site that would mean possibly the loss of one to two more supermarkets from the City Centre.

Irrespective of the pending appeal decisions, the matter for consideration remains that the land the subject of Amendment 21 is not a suitable location for the establishment of shop, discount department store or supermarket uses beyond those that have been approved. It is considered that the changes to the Amendment being recommended will have positive benefits, not only in ensuring the lawfulness of the land uses on the West Street site, but also by limiting the number and potential for the expansion of the floor space of such premises at West Street, and supporting the strategic planning direction that new or significantly expanded supermarket and discount department store development should occur in town/city centre locations.

## **CONCLUSION**

Officers are recommending that proposed Scheme Amendment 21 to Local Planning Scheme 21 and the associated draft structure plan be adopted for final approval and referred to the WAPC.

## **OPTIONS**

Should the Council not support the Officer Recommendation the Council could instead resolve –

1. 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, but the final decision is not the Council's to make, it is a matter for the WAPC and Minister for Planning.
2. To seek further information before making a decision.

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

## TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The implementation of the Officer Recommendation will involve the referral of Amendment 21 and the draft structure plan to the WAPC for final approval and this will occur within one month of the resolution.

### COUNCIL DECISION AND OFFICER RECOMMENDATION

**C1803/040** Moved Councillor P Carter, seconded Deputy Mayor McCallum

That the Council:

1. In pursuance of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts draft Amendment 21 to the City of Busselton Local Planning Scheme 21, in accordance with the modifications proposed by the 'Schedule of Modifications' at **Attachment B**, for final approval for the purposes of:
  - a) Rezoning a portion of Lot 803 Chapman Hill Road, Bovell from 'Agriculture' to 'Special Purpose (Ambergate Industrial/Service Commercial Development Area)'.
  - b) Deleting Special Provision Area 47 from Schedule 3 - 'Special Provision Areas'.
  - c) Amending the boundary of Special Provision Area 48.
  - d) Amending Schedule 3 - 'Special Provision Areas' as follows –

No.	PARTICULARS OF LAND	ZONE	SPECIAL PROVISIONS
SP48	Lot 11 and part Lot 803 Chapman Hill Road, Bovell	Special Purpose (Ambergate Industrial/Service Commercial Development Area)	<p>1. The intent of this special provision area is to enable the use and development of the site as a service commercial and mixed light industrial precinct.</p> <p>2. The following uses shall be permitted:</p> <ul style="list-style-type: none"> <li>• Bulk Store</li> <li>• Bus Depot</li> <li>• Chandlery</li> <li>• Convenience Store</li> <li>• Educational Establishment</li> <li>• Lunch Bar</li> <li>• Light Industry</li> <li>• Liquid Fuel Depot</li> <li>• Medical Centre</li> <li>• Motor Vehicle and Marine Sales Premises</li> <li>• Motor Vehicle Repair</li> <li>• Motor Vehicle Wash</li> <li>• Research and Development Facility</li> </ul>

			<ul style="list-style-type: none"> <li>• Plant Nursery</li> <li>• Public Utility</li> <li>• Recreation Area</li> <li>• Recreation Facility</li> <li>• Service Industry</li> <li>• Service Station</li> <li>• Showroom</li> <li>• Transport Depot</li> <li>• Veterinary Hospital</li> <li>• Warehouse</li> </ul> <p>All other uses are not permitted.</p> <p>3. Notwithstanding Part 4 of the deemed provisions of the Scheme the structure plan shall include the following details:</p> <p>a. No direct vehicular access to lots from Chapman Hill Road or Busselton Bypass;</p> <p>b. Vehicular access to the precinct shall be limited to controlled, shared access points from Chapman Hill Road and the Ambergate North entry road only;</p> <p>c. Service roads and shared, coordinated parking and access shall be provided within the land and along the service road frontage;</p> <p>d. Protection of sites of heritage, conservation or environmental significance;</p> <p>e. Built form and presentation guidelines to ensure the appropriate design and siting of buildings;</p> <p>f. Particular design requirements for landmark buildings to be located at the corner of the Busselton Bypass and Chapman Hill Road and the corner of the Ambergate North entry</p>
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			road and Chapman Hill Road; and g. Other information considered relevant by the local government. 4. All development that adjoins the Busselton Bypass shall have a minimum 24m building setback.
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- e) Amending Schedule 1 – ‘Interpretations’ by amending the definition of ‘Medical Centre’ to read as follows –
- “‘*Medical Centre*’ means premises other than a hospital used by 3 or more health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care”.
- f) Amending Schedule 1 – ‘Interpretations’ by deleting ‘Discount Department Store’ and ‘Supermarket’.
- g) Amending the Scheme Map accordingly.
2. In accordance with regulation 35(2) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, it is the opinion of the Council that Amendment 21 is a ‘standard’ amendment, for the following reasons:
- a) The Amendment will have minimal impact on land in the Scheme area that is not the subject of the amendment; and
- b) The Amendment will have no significant environmental, social, economic or governance impacts on the land in the Scheme area.
3. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, endorse the Schedule of Submissions at **Attachment I** prepared in response to the public consultation undertaken in relation to Amendment 21.
4. Upon preparation of the necessary documentation, refers the adopted Amendment 21 to the Western Australian Planning Commission for consideration according to the *Planning and Development Act 2005*.
5. Pursuant to r.56 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, should directions be given that modifications to draft Amendment 21 are required, direct these modifications to be undertaken accordingly, on behalf of the Council, unless they are considered by Officers likely to significantly affect the purpose and intent of the draft Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.
6. Pursuant to Part 4 of the Deemed Provisions (Schedule 2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, adopts the draft Structure Plan for Lot 11 and portion of Lot 803 Chapman Hill Road, Bovell for final approval.

**CARRIED 8/0**

**EN BLOC**

10.1 Policy and Legislation Committee - 27/02/2018 - LOCAL PLANNING POLICY - HOLIDAY HOMES

<b>SUBJECT INDEX:</b>	Development Control Policy
<b>STRATEGIC OBJECTIVE:</b>	Planning strategies that foster the development of healthy neighbourhoods that meet our needs as we grow.
<b>BUSINESS UNIT:</b>	Development Services and Policy
<b>ACTIVITY UNIT:</b>	Development Services
<b>REPORTING OFFICER:</b>	Senior Development Planner - Andrew Watts
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Existing Local Planning Policy 7C Holiday Home Provisions <a href="#">⇒</a>
	Attachment B Advertised Holiday Homes Local Planning Policy <a href="#">⇒</a>
	Attachment C Proposed 7C Holiday Home Provisions <a href="#">⇒</a>
	Attachment D Planning Bulletin 99 <a href="#">⇒</a>
	Attachment E Schedule of Submissions - Revised Holiday Homes LPP <a href="#">⇒</a>

This item was considered by the Policy and Legislation Committee at its meeting on 27 February 2018, the recommendations from which have been included in this report.

DISCLOSURE OF INTEREST	
<b>Date</b>	14 March 2018
<b>Meeting</b>	Council Meeting
<b>Name/Position</b>	Kelly Hick, Councillor
<b>Item No./Subject</b>	10.1 Local Planning Policy - Holiday Homes
<b>Type of Interest</b>	Financial Interest
<b>Nature of Interest</b>	I am the owner/manager of a tourism accommodation business, Dunsborough Ridge Retreat and the changes to the proposed Policy could reasonably have a potential impact on my income from this business

DISCLOSURE OF INTEREST	
<b>Date</b>	14 March 2018
<b>Meeting</b>	Council Meeting
<b>Name/Position</b>	Robert Bennett, Councillor
<b>Item No./Subject</b>	10.1 Local Planning Policy - Holiday Homes
<b>Type of Interest</b>	Financial Interest
<b>Nature of Interest</b>	I live on a property that has guest accommodation

5.44pm At this time Cr Hick and Cr Bennett left the meeting.

## PRÉCIS

As a part of the review of the City's planning framework, it has previously been identified that a review of the current City of Busselton *Local Planning Policy 7C Holiday Homes Provisions* (LPP 7C) is appropriate.

A revised Policy was presented to the Policy and Legislation Committee at its meeting of 17 August 2017 and then to Council at its meeting held on 13 September 2017. Council's approval was granted; to advertise a revised *City of Busselton Local Planning Policy - Holiday Homes Provisions*. Council also foreshadowed further investigations are to be taken into the advertising thresholds for Holiday Homes, as provided in the Scheme. A copy of the advertised policy is included at Attachment B.

Following advertising, the revised policy is presented for Council's consideration, for its adoption including amendments made in response to the issues raised during consultation, or technical issues that have arisen since 13 September 2017. A copy of the revised amended policy is included at Attachment C.

The foreshadowed investigations for a future amendment to the Local Planning Scheme that would narrow the circumstances in which the Scheme would require compulsory consultation on applications for approval of holiday homes, is a separate process and subject to a separate report. It is not incorporated in the recommendations of this report.

## **BACKGROUND**

In December 2012, the Council adopted LPP 7C; this was one of the final steps in the introduction of a regulatory regime for holiday homes in the City. Prior to that time, holiday homes had been essentially *de facto* unregulated. The regulatory regime was brought into effect in a practical sense during 2013.

The current policy, which is one aspect of that regulatory regime, includes restrictions on the locations of holiday homes within residential areas, where holiday homes are generally not supported in those residential areas more distant from the coast and other significant tourist facilities (e.g. Yalyalup, Vasse). Despite that, a number of applications have been received for properties in those areas. Some of those applications have been referred to Council for determination with approval in some cases being granted. It should also be noted that, during the introductory phase, during 2013, approvals were generally granted for 'established' holiday homes in those areas.

Holiday homes are an economically important component of the local tourist accommodation mix and play a significant role as part of a pathway to permanent residency in the City. Because of that, a significant proportion of the construction related employment in the City is related to holiday homes. That was, in fact, an important finding, including specifically in relation to the City of Busselton, of an extensive study into temporary population flows in coastal areas undertaken for the Australian Coastal Councils' Association.

The amended policy proposes a removal of location restrictions for holiday homes. The policy is also in a revised format identifying 'deemed-to-comply' and 'performance criteria' provisions.

At its meeting of 13 September 2017 Council granted approval to proceed to advertising of an amended City of Busselton *Local Planning Policy - Holiday Homes Provisions*.

The public comment period concluded on 29 November 2017. A total of eight submissions have been received. Issues raised in submissions are outlined and discussed in the 'Officer Comment' section of this report.

Following advertising, the revised policy is presented for further consideration by the Council, with recommended modifications in light of submissions received, as well as to address some of the detailed editing issues.

The advertised policy is included as Attachment B, and a document illustrating the further changes now proposed is Attachment C.

## **STATUTORY ENVIRONMENT**

The key statutory environment relevant to this matter is set out in the *Planning and Development Act 2005*, the *Planning and Development (Local Planning Schemes) Regulations 2015*, the City's Local Planning Scheme and the City's Holiday Homes Local Law.

## **RELEVANT PLANS AND POLICIES**

LPP 7C sets out guidance to determine an application for a holiday home; a copy of the current policy is provided as Attachment A.

Western Australian Planning Commission Planning Bulletin 99 (PB99) sets out the aims for local governments when drafting Local Planning Policy on Holiday Homes. The proposed Policy is generally consistent with the aims of PB99. A copy of PB99 is at Attachment D.

This report recommends the adoption of a revised local planning policy.

## **FINANCIAL IMPLICATIONS**

The revised policy, if adopted by the Council after consultation, would marginally reduce the cost to the City of assessing applications for development approval for holiday homes, as it would provide officers and applicants with clearer guidance.

## **STRATEGIC COMMUNITY OBJECTIVES**

The recommendation of this report reflects Community Objectives 2.1 and 4.1 of the Strategic Community Plan 2017, which are –

- 2.1 Planning strategies that foster the development of neighbourhoods that meet our needs as we grow.
- 4.1 An innovative and diversified economy that provides a variety of business and employment opportunities as well as consumer choice.

## **RISK ASSESSMENT**

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks as well. Risks are only identified where the individual risk, once controls are identified, is medium or greater. No such risks were identified.

## **CONSULTATION**

In accordance with the requirements of the Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 (Deemed Provisions), cl 4(1) and 4(2) consultation regarding the proposed amendment of the local planning policy was undertaken by a notice and invitation for submissions to be received within 21 days, following which the amendments would be further considered by the Council, in light of any submissions received.

Further to the notice advising of the proposed local planning policy amendment, two public briefing sessions were held during the public consultation period; a Busselton session on 14 November 2017 and a Dunsborough session on 16 November 2017.

At the conclusion of the public comment period on 29 November 2017 a total of seven submissions had been received, consisting of two submissions from government agencies and five from members of the general public. One further late submission from a member of the public was received approximately two weeks after the submission closure date.

A Schedule of Submissions is provided as Attachment E.

#### **OFFICER COMMENT**

The most substantive change proposed with the draft policy is the removal of restrictions on the location of holiday homes in some residential areas. At present, the policy does not support holiday homes being established in some residential areas, mostly areas that are further from the coast and tourist amenities, including areas such as Vasse, Yalyalup (i.e. Provence, Via Vasse, Willow Grove, Country Road estates) and parts of Dunsborough (i.e. areas to the west of Naturaliste Terrace, including the Cape Rise and Naturaliste Heights estates). Notably, as a result of revisions made to the policy in 2015, the policy does currently support holiday homes in the area of the Dunsborough Lakes estate. Having considered the issues, officers are of the view that the restrictions do not have a clear purpose or rationale, and are not necessary.

Three submissions received specifically mentioned support for the removal from the policy of the area restrictions. There were no specific objections to removing the area designations, other than those concerned about competition issues. One submission raised objection to removal of area restrictions on the basis of negative impact on more traditional forms of short stay accommodation, such as hotels, motels, guesthouses etc. and the perception that it is “no longer a level playing field”.

Almost exclusively the issues that are raised by members of the public in respect to proposed or existing holiday homes relate to impact on the amenity of neighbouring properties as a result of concerns regarding potential or perceived:

- Anti-social behavior;
- Noise;
- Lack of privacy;
- Traffic and parking;
- Inadequacy of property to accommodate the proposed number of occupants;
- Waste management; and
- Holiday home managers not fulfilling their responsibilities.

Three submissions received raised issues related to the impact of the operation of holiday homes on the amenity of neighbours.

If a holiday home is well managed it should be largely indistinguishable from any other house. Provided it is suitably serviced for the number of proposed occupants then the registration process is designed to address other amenity issues which arise from the use of a property as a holiday home. Anti-social behaviour and traffic issues should be reported to the Police. One submission suggested that the registration process should be tightened to require the use of a locally situated holiday home manager. Whilst there may be some merit in this suggestion, the registration process is addressed through the Holiday Homes Local Law rather than the Local Planning Policy. Changes to the Local Law would require separate consideration by Council and are not a part of the current proposal. Review of the Local Law has, however, been included in the City’s local law review programme. One submission, which focused on neighbourhood amenity concerns, raised issue with high levels of holiday home concentration in some streets within the City and the impact this has on permanent residents in the area.



Officers do not consider it is possible or at least practicable to implement a cap on the number or concentration of holiday homes that can be approved in an area.

Two of the submissions received specifically focussed on a desire to be able to utilise ancillary dwellings for the purpose of holiday home use. The Local Planning Scheme interpretation of 'Holiday Home (Single House)' specifically excludes ancillary accommodation (i.e. a 'granny flat' or similar). This is not an issue that can be addressed through local planning policy, although it is an issue officers have given some consideration. Although officers can see that this may be appropriate in some instances, it is actually very complex to construct a set of controls that would allow this to occur.

### **Issues raised at Briefing Sessions**

Two public briefing sessions were held during the consultation period; a Busselton session on 14 November 2017 and a Dunsborough session on 16 November 2017.

Aside from the issues addressed in the submissions, identified above, a concern was expressed that amongst short stay tourist accommodation types, commercially operated holiday homes were receiving a beneficial treatment by not being subject to the plus 10% differential rating which applies in the Tourist Zone.

The purpose of the differential rate is to fund marketing initiatives that in turn promote/create demand. Short stay providers have expressed an opinion that holiday homes are given a 'free ride' and should also contribute to the marketing that in turn creates the demand that they benefit from.

If a differential rate was equally applied to a holiday home as a land use class, the same as applies in the Tourist Zone, the minimum increase per holiday home would be \$122.70, the average increase is \$172.60, and the top 10% is an increase of \$304.40. Combined the City would receive around an additional \$120,000 in rates income.

It is anticipated that Council will consider this matter as part of its review of the Long Term Financial Plan and in its considerations for the 2018/19 budget.

### **Amendments to the State Bushfire Protection Criteria**

The most significant changes proposed to the draft policy relate to the bush fire requirements.

In the period since Council approved public consultation of the Holiday Home Policy there have been two amendments to the State's *Guidelines for Planning in Bushfire Prone Areas*, and these have affected assessment of holiday home proposals.

It has been clarified that short stay accommodation, at a residential scale, if located in a designated bushfire prone area, is both a 'minor' development and a 'vulnerable' class of land use. This applies special requirements including mandating the provision of a Bushfire Management Plan (BMP) and a Bushfire Emergency Evacuation Plan.

Whilst evacuation, if safe to do so, should always be the preference, it is important the building itself is of a suitable construction to provide a place of refuge of last resort.

Converting a dwelling to a holiday home, unlike converting to a Bed and Breakfast, or to a Guest House, does not require a building approval and construction requirements. Holiday homes are unique in their exclusion from the effect of the Building Code of Australia (BCA), which otherwise applies the bushfire construction requirements in AS 3959-2009, (construction of buildings in bushfire prone areas).

The State planning framework has offset this. Schedule 2 Part 10A of the Planning Regulations calls in the construction requirements described in AS3959-2009, to be applied as a planning consideration.

However, given that a holiday home will usually not be a new construction it will often not be practical to comply with the Deemed to Comply solutions identified in the Standards. It is therefore important to clarify Performance Solutions (normally applied through the BCA) will also apply at planning; to achieve a comparable outcome to the Deemed to Comply solutions.

Also since Council approved the local planning policy for consultation, the State's Guidelines has now identified that an Asset Protection Zone may extend beyond a site if supported by a perpetual agreement. Previously it was restricted to within the site.

### **Foreshadowed investigation into the thresholds for the compulsory advertising of holiday homes.**

Council's resolution 13 September:

*"Foreshadows a future amendment to the Local Planning Scheme that would narrow the circumstances in which the Scheme would require compulsory consultation on applications for approval of holiday homes."*

The thresholds which determine whether a holiday home application is advertised is specified in Scheme 21.

The thresholds are presently set at:

- Holiday Home (Single House) – it is advertised if accommodating nine or more people, up to a maximum of 12.
- Holiday Home (Multiple/Group Dwelling) – it is advertised in all instances up to a maximum of 6 people.

The maximum number of guests is part of the land use definition in the Scheme. Proposals which exceed the maximum number, as identified in the definition, become a different class of land use. They become Tourist Accommodation and are 'prohibited' in the Residential Zone. Proposal of this scale are instead directed to the Tourist Zone, the Business Zone and the Viticulture and Tourism Zone.

No submissions were received that raised the issue of advertising as an associated issue with the revised policy. The revised policy is also not dependent upon reviewing the consultation thresholds.

The investigations and the initiation of an amendment to change the advertising thresholds is subject to a separate procedure, and therefore no recommendation about advertising thresholds is made in this report. The City's resolution 13 September 2017, with regard to the foreshadowed investigations, remains active.

### **CONCLUSION**

It is recommended that the amended *Local Planning Policy - Holiday Homes Provisions* be adopted pursuant to the *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2 (Deemed Provisions), cl 4(3) and notice of the policy be published in accordance with cl 4(4).

Further modifications as described above are recommended, as well as some minor editing changes, which should be self-explanatory.

**OPTIONS**

Fundamentally, there are three options, other than the officer recommendation-

- (1) proceed with adoption of the amended policy without modification; or
- (2) proceed with adoption of the amended policy with further modifications; or
- (3) not to proceed with the amended policy.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Public notice of the adoption of the policy and commencement of its effect will occur within 4 weeks.

**COUNCIL DECISION/COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION****C1803/041**

Moved Councillor P Carter, seconded Councillor R Paine

That the Council,

- A. In accordance with *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 (Deemed Provisions)* -
  1. Pursuant to cl.5(1), amends City of Busselton Local Planning Policy 7C *Holiday Homes Provisions*, by the following replacement provisions:

**7C. HOLIDAY HOMES PROVISIONS****1.0 BACKGROUND**

The City of Busselton is a popular destination for tourists and holiday makers and has a large number of Holiday Homes, which are essentially residential houses and units which are utilised to accommodate these visitors. Holiday Home rentals are an important aspect of the tourism industry in the District, and have long been an important part of local and Western Australian lifestyle and culture.

Over time, however, there have been changes in the character of the communities in which Holiday Homes are located, as well as increased commercialisation of Holiday Homes and their use. Amongst other factors, that has led to the development by the City, cognisant of guidance provided at a State level, of a regulatory regime for Holiday Homes.

Holiday Homes which are utilised on a commercial basis (i.e. rented out to paying guests) require a development approval to be issued under the Local Planning Scheme and a registration to be issued under the *Holiday Homes Local Law 2012*. These policy provisions provide guidance to the City, as well as to applicants, landowners and the community, in relation to the City's exercising of discretion in making decisions on Holiday Home applications pursuant to the Local Planning Scheme.

## 2.0 OBJECTIVES

The objectives of these provisions are to –

1. Provide clear guidance regarding the assessment of applications for development approval for Holiday Homes;
2. Identify circumstances in which Holiday Homes will be supported, and circumstances in which holiday homes may be supported, given more detailed consideration; and
3. Balance the interests of residents, Holiday Home owners and the community as a whole.

## 3.0 APPLICATION

These policy provisions are adopted pursuant to *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 (Deemed Provisions) clause 4* and apply to the whole of the City.

This policy only applies to Holiday Homes that are being made available for short stay rental purposes for commercial gain. Holiday Homes utilised only for personal use are excluded from this policy.

These provisions should be read in conjunction with the Local Planning Scheme and the *Holiday Homes Local Law 2012*.

## 4.0 INTERPRETATION

As per Schedule 1 of the Scheme the following interpretations are relevant:

**“Holiday Home (Multiple/Grouped Dwelling)”** means a grouped dwelling or multiple dwelling, which may also be used for short stay accommodation for hire or reward for no more than six people (but does not include a bed and breakfast, chalet development, guesthouse, rural tourist accommodation or tourist accommodation).

**“Holiday Home (Single House)”** means a single house (excluding ancillary accommodation), which may also be used for short stay accommodation for hire or reward for no more than 12 people (but does not include a bed and breakfast, chalet development, guesthouse, rural tourist accommodation or tourist accommodation).

*Note: the terms ‘multiple dwelling’, ‘grouped dwelling’ and ‘single house’ are defined in the Residential Design Codes of Western Australia.*

The following additional interpretations are relevant to this policy:

**“Holiday Home”** means both a Holiday Home (Multiple/Grouped Dwelling) and/or a Holiday Home (Single House).

**“Deemed-to-comply”** means a provision which, if satisfied, means that a Holiday Home is deemed compliant with respect to the matters subject of that provision. The local government shall not refuse to grant approval to an application where the application satisfies all of the relevant deemed-to-comply provisions.

**“Performance criteria”** means provisions to be used in the preparation, submission and assessment of development proposals for the purpose of determining their acceptability, where they do not meet the relevant deemed-to-comply provisions.

*Note: applications that do not meet all of the ‘deemed-to-comply’ provisions would be assessed against the relevant ‘performance criteria’ (i.e. they would only be assessed against the latter in relation to those aspects to which they do not meet the former). So if the ‘car parking’ deemed-to-comply provisions are met, but the ‘dwelling design’ ones are not, dwelling design related issues would require assessment against the dwelling design performance criteria, but the car parking related issues would not require assessment against the car parking related performance criteria. Similarly, if the potable water elements of the ‘utility servicing’ deemed-to-comply provisions are met, but the refuse collection ones are not, it is only the refuse collection issues that need to be considered against the directly related performance criteria.*

## 5.0 POLICY STATEMENT

*Note that the headings below do form part of the policy statement.*

### 5.1 Location of Holiday Homes

A Holiday Home satisfies the **deemed-to-comply** provisions if:

- C1.1 The Holiday Home is located within an existing, lawful dwelling (other than a dwelling approved as a second dwelling or rural worker’s dwelling pursuant to clause 4.5 (f) or (g) of the Local Planning Scheme, or equivalent clause in previous schemes) in the Agriculture or Viticulture and Tourism Zone; or
- C1.2 In all other Zones, the Holiday Home has direct frontage to a public road and/or public open space and has a minimum of 350m<sup>2</sup> exclusively for the use of the dwelling; or
- C1.3 For a Holiday Home (Grouped/Multiple Dwelling), written support has been received by the local government from the majority of owners of properties in the complex or development within which the Holiday Home is to be located (excluding the owner of the site subject of the application, unless the applicant owns all of the properties in the complex or development).

A Holiday Home satisfies the **performance criteria** provisions if:

- P1.1 The City is satisfied that approval of the Holiday Home is not likely to have a significant impact on the amenity of adjoining and nearby residents and would not constitute the conversion of a second dwelling or rural worker’s dwelling to a Holiday Home.

## 5.2 Utility Servicing

A Holiday Home satisfies the **deemed-to-comply** provisions if:

- C2.1 The Holiday Home is connected to reticulated water, or provided with a 135,000 litre rainwater tank for the exclusive use of the Holiday Home; and
- C2.2 The Holiday Home is located within the City's kerbside refuse collection area; and
- C2.3 The Holiday Home is connected to reticulated sewerage, or there is an approved on-site effluent disposal system with adequate capacity for the proposed number of occupants.

*Note: in areas not serviced by reticulated sewerage, it should not be assumed that an existing on-site effluent disposal system approved for a single house will have sufficient capacity for the proposed number of occupants without the need for upgrading. Advice should be sought from the City's Environmental Health staff prior to lodging an application for development approval.*

A Holiday Home satisfies the **performance criteria** provisions if:

- P2.1 The City is satisfied that the Holiday Home will have an adequate supply of potable water; and
- P2.2 The City is satisfied that the Holiday Home will be provided with an adequate refuse collection service; and
- P2.3 The City is satisfied that the Holiday Homes will be provided with an adequate on-site effluent disposal system (and provision of such would be a condition of any approval, to be met prior to the commencement of the use if a suitable system is not already in place and approved).

## 5.3 Car Parking

A Holiday Home satisfies the **deemed-to-comply** provisions if:

- C3.1 The Holiday Home will have constructed on-site car parking bays, consistent with the size and manoeuvrability criteria set out in the *Residential Design Codes of Western Australia*, but with no more than any of two bays arranged one behind the other (i.e. tandem bays are permitted, with two bays one behind another, but not with a third bay behind another two), in accordance with the following rates:

Maximum number of occupants	Minimum number of car parking
1-3	1
4-6	2
7-8	3
9-10	4
11-12	5

A Holiday Home satisfies **performance criteria** provisions if:

- P3.1 The City is satisfied that the Holiday Home has a minimum of two constructed on-site car parking bays and, where additional car parking bays would be required to comply with C3.1 above, at least the equivalent number of cars could park on the site without the need for cars to park on the verge, in adjacent or nearby public car parking, or in visitor car parking bays within a unit complex or similar; or
- P3.2 Where a Holiday Home is located in the 'Business' Zone, the City is satisfied that the Holiday Home will not have a noticeable effect on the availability of public car parking within the locality.

#### 5.4 Dwelling Design

A Holiday Homes satisfies the **deemed-to-comply** provisions if:

- C4.1 The Holiday Home is an existing, lawful dwelling; or
- C4.2 If the Holiday Home is not an existing, lawful dwelling, the Holiday Home will meet all of the relevant design standards and requirements that would apply to a new dwelling on the land, including the requirements of the Local Planning Scheme (including the *Residential Design Codes of Western Australia*), all relevant Local Planning Policies, and all relevant Structure Plan, Activity Centre Plan and Local Development Plan provisions; and
- C4.3 The maximum number of occupants within a Holiday Home complies with the following standards:
- (a) There is 5.5 square metres per occupant in each bedroom utilising beds; and
  - (b) There is 3.5 square metres per occupant in each bedroom utilising bunks; and
  - (c) There is sufficient bedroom space to accommodate the maximum number of occupants consistent with (a) and (b) above; and
- C4.4 Bedrooms in a Holiday Home are provided in accordance with the following rates:

Maximum number of occupants	Minimum number of bedrooms rec
1-2	1, or studio
3-4	2
5-8	3
9-12	4

C4.5 Bathrooms and toilets in a Holiday Home are provided in accordance with the following rates:

Maximum number of occupants	Minimum number of bathrooms/to
1-6	1 bathroom and 1 toilet
7-12	1 or 2 bathrooms and 2 toilets

A Holiday Homes satisfies the **performance criteria** provisions if C4.1 or C4.2 is met, and C4.3 and C4.5 are met; and

P4.1 The City is satisfied that the dwelling design is appropriate to accommodate the proposed maximum number of occupants. In general, if C4.4 is not met, this would only be the case if there are a smaller number of relatively large bedrooms.

*Note: the Local Planning Scheme establishes that the maximum number of occupants in a Holiday Home (Single House), regardless of the number or size of bedrooms, is 12, and the maximum number of occupants in a Holiday Home (Grouped/Multiple Dwelling) is six. The City has no discretion to approve Holiday Homes with maximum occupant numbers higher than those limits.*

## 5.5 Bush Fire Management

A Holiday Home satisfies the **deemed-to-comply** provisions if:

C5.1 The Holiday Home is not on land identified as being in a bushfire prone area by an order made under section 18P of the *Fire and Emergency Services Act 1998*; or

C5.2 The Holiday Home is on land identified as being in a bushfire prone area by an order made under section 18P of the *Fire and Emergency Services Act 1998* and will meet all of the relevant design standards and requirements for a minor vulnerable development described in the *WAPC Guidelines for Planning in Bushfire Prone Areas*, including but not limited to the following -

C5.2.1 A Bushfire Management Plan and Bushfire Emergency Evacuation Plan developed consistent with the *Guidelines for Planning in Bushfire Prone Areas* ('vulnerable land use') has been submitted; and

C5.2.2 The building has been constructed to the determined BAL requirement and associated *Deemed to Satisfy* solution pursuant to *AS3959-2009 (Construction of buildings in bushfire-prone areas)*; and

C5.3 The Asset Protection Zone (APZ) required -

(a) is no greater than 25 metres from the building to a **determined hazard**; and



- (b) can be accommodated entirely within the subject lot; and
- (c) can be created and maintained without need to obtain a clearing permit under the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* and/or approval under the (Commonwealth) *Environmental Protection and Biodiversity Conservation Act 1999*.-

A Holiday Homes satisfies the performance criteria provisions if:

- P5.1 C5.2.1 has been complied with; and
- P5.2 If C5.2.2 has not been complied with, the building has been constructed to the determined BAL requirement by Performance Solution as provided for by Part 1.0 in *NCC 2016 Building Codes of Australia Volume 2*; and
- P5.3 (a) If C5.3 (a) has not been complied with, a larger APZ may be supported, but only to the extent necessary to allow the construction standard to be reduced to BAL29; and
  - (b) If C5.3 (b) has not been complied with –
    - (i) where the APZ extends outside the subject lot, it overlaps substantially with an APZ already on an adjoining lot; or
    - (ii) a perpetual arrangement is in place with the owner (in the case of freehold land) or manager (in the case of Crown / reserve land) to allow and require the maintenance of the portion of the APZ that extends beyond the subject lot; and
  - (c) If C5.3 (c) has not been complied with, the necessary permit or approval has been obtained, or the applicant commits to seeking the necessary permit or approval prior to commencement of development (including change of use).
- 2. Pursuant to cl.4(4), advertises adoption of the above amended City of Busselton Local Planning Policy *Holiday Homes Provisions*, by notice in a newspaper circulating in the Scheme.

**CARRIED 6/0**

5.44pm

At this time Cr Hick and Cr Bennett returned to the meeting.

10.3 Policy and Legislation Committee - 27/02/2018 - STANDING ORDERS LOCAL LAW

<b>SUBJECT INDEX:</b>	Local Laws
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	Legal Services
<b>REPORTING OFFICER:</b>	Legal Officer - Briony McGinty
<b>AUTHORISING OFFICER:</b>	Director, Community and Commercial Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Absolute Majority
<b>ATTACHMENTS:</b>	Attachment A Local Law marked up <a href="#">⇒</a> Attachment B Local Law for gazetta <a href="#">⇒</a>

**This item was considered by the Policy and Legislation Committee at its meeting on 27 February 2018, the recommendations from which have been included in this report.**

**PRÉCIS**

Council previously resolved to authorise the preparation and advertising of the proposed *City of Busselton Standing Orders Local Law 2018 (Proposed Local Law)*. The purpose of this report is for Council to consider submissions received in relation to the Proposed Local Law and to consider whether to make the Proposed Local Law pursuant to Section 3.12 of the *Local Government Act 1995 (the Act)*.

It is recommended that Council resolve to make the Proposed Local Law.

**BACKGROUND**

Council resolved at its meeting on 11 October 2017:

*That the Council:*

- (1) *That the Council commences the law-making process, for the City of Busselton Standing Orders Local Law 2017, the purpose and effect of the local law being as follows:*

*Purpose: The purpose of the proposed local law is to provide for the orderly conduct of the proceedings and business of the Council.*

*Effect: The effect of the proposed local law is that all Council meetings, committee meetings, and other meetings as described in the Act, shall be governed by the proposed local law unless otherwise provided in the Act, regulations or other written law.*

- (2) *That the Council authorises the CEO to carry out the law-making procedure under section 3.12(3) of the Local Government Act, by –*
  - (i) *giving Statewide public notice and local public notice of the proposed local law; and*
  - (ii) *giving a copy of the proposed local law and public notice to the Minister for Local Government.*

- (3) *That the CEO, after the close of the public consultation period, submits 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.*

Pursuant to abovementioned Council Resolution the Proposed Local Law was published for public comment and a copy given to the Minister for Local Government. No public submissions, other than from the Western Australian Local Government Association (**WALGA**), have been received. The response from the Department of Local Government (**DLG**) and WALGA are discussed under the OFFICER COMMENT section of this report.

The advice and comments received from DLG and WALGA resulted in minor changes being made to the original version of the local law which was presented to Council at its 11 October 2017 meeting. These changes, which are discussed in more detail under the OFFICER COMMENT section of this report, do not cause the Proposed Local Law to be significantly different from what was originally proposed. Therefore, the Proposed Local Law is now referred back to Council to consider these minor changes and to resolve whether or not to make the Proposed Local Law.

### **STATUTORY ENVIRONMENT**

Section 3.5 of the Act provides Council with the head of power for making a standing orders local law.

The procedure for making local laws is set out in section 3.12 of the Act and Regulation 3 of the *Local Government (Functions and General) Regulations 1996*. Under section 3.12(4) of the Act, Council is to consider any submissions made and may make the local law as proposed or make a local law that is not significantly different from what was originally proposed. A decision to make a local law has to be supported by an absolute majority of Council.

If Council resolves to make the Proposed Local Law then the process required under section 3.12(5) and (6) of the Act needs to be carried out. Section 3.12(5) requires that the local law be published in the *Government Gazette* and a copy be provided to the Minister for Local Government. Section 3.12(6) requires that after the local law has been published in the *Government Gazette*, the City must give local public notice stating the title of the local law, summarising the purpose and effect of the local law and advising that copies of the local law may be inspected or obtained from the City offices.

In accordance with section 3.14 of the Act the local law will come into operation 14 days after publication in the *Government Gazette*.

### **RELEVANT PLANS AND POLICIES**

The City has adopted a Code of Conduct to be observed by Council members in accordance with Section 5.103(1) of the Act.

The policy '005 - Meetings, Information Sessions and Decision-making Processes' sets out the guidelines for provision of information to Councillors and the Council and other matters relating to the various forums utilised.

### **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 and there are sufficient funds in the legal budget for this purpose. Making and implementing the Proposed Local Law should not have any other financial implications for the City.

### Long-term Financial Plan Implications

Nil.

### **STRATEGIC COMMUNITY OBJECTIVES**

The proposal aligns with Key Goal Area 6 of the *City of Busselton Strategic Community Plan 2017* as follows:

*6.1 Governance systems, processes and practices are responsible, ethical and transparent.*

### **RISK ASSESSMENT**

The proposed local law does not involve major departures from current practices and is therefore considered low risk.

### **CONSULTATION**

The Proposed Local Law was advertised publicly in both local and state-wide newspapers for a minimum of 6 weeks in accordance with the requirements under section 3.12(3)(a) of the Act. No public submissions have been received, other than from WALGA, to be discussed under OFFICER COMMENT below.

In accordance with section 3.12(3)(b) of the Act a copy of the proposed local law was forwarded for consideration and comment to the Minister for Local Government. The DLG responded on behalf of its Minister and suggested various minor changes to the Proposed Local Law. Most of these changes, which are dealt with in more detail in the OFFICER COMMENT section of this report, have been implemented.

### **OFFICER COMMENT**

Various minor changes have been made to the Proposed Local Law which can be seen in the marked-up version in Attachment 1. More substantive changes are discussed below.

#### Department of Local Government

The DLGC recommended changing the wording of certain clauses of the Proposed Local Law. These changes, which are aimed at avoiding potential ambiguity of certain terms and expressions used in the local law and ensuring consistency with current parliamentary requirements, have subsequently been made to the original version of the proposed local law. They include the following:

**1. Clause 5.3 – Announcements without discussion**

The Joint Standing Committee on Delegated Legislation (JSC) has occasionally raised issues with these kinds of clauses. As a general rule, the JSC is concerned with clauses which state that announcements are not to be the subject of any debate or discussion. If an important announcement is made, this restriction might hinder the Council's ability to deal with an important matter. Paragraph (c) has been amended as follows:

*“not to be the subject of any discussion, unless the Council resolves otherwise”.*

**2. “Objectionable”**

The term ‘objectionable’ is used in clauses 8.16(3), 8.17(b) and 9.2(2)(b). The DLG considered the term potentially vague and suggested replacing ‘objectionable’ with ‘insulting’ to ensure it is precise as well as consistent with clause 8.9(2)(a)(i).

## WALGA

WALGA provided comment to the City for consideration based on their experience in preparing the WALGA model local law.

### 1. **Clause 5.9 - Urgent Business**

WALGA considered the provisions relating to urgent business to be quite onerous compared to the WALGA model. However, it is considered the provisions are appropriate. If necessary, an appropriate resolution to suspend the standing orders can be made. Accordingly, the recommendation is to retain the clause in the Proposed Local Law.

### 2. **Clause 5.10 - Adoption by Exception Resolution**

WALGA also queried the effect of clause 5.10(5) which requires a member who wishes to move a motion different to a recommendation that would otherwise be within an adoption by exception resolution to comply with certain criteria. Whilst acknowledging the importance of having time to consider matters thoroughly, this clause was considered to potentially limit opportunities for elected members to participate in decision-making. Accordingly, the clause has been amended to a requirement that members "*should, as far as practicable*" rather than "*must*" comply with those criteria. In considering the amendment, a further provision has been included which ensures the CEO has the ability to comply with his requirements under section 5.41(b) of the Act regarding provision of information and advice to members.

## Officer Changes

### 1. **Clause 5.8 – Motions of which previous notice has been given**

The current standing orders provide NOMs must be given with 21 days' notice. The model requires only 7 days. The local law that originally went to Council recommended the City move to 7 days. However, there was concern amongst Councillors that the limited timeframe could be used by Councillors to issue NOMs when they were aware other Councillors with contrary views would be on leave. The version which was adopted for advertising provided for 21 days.

Further consideration has been given to the matter and, in line with the model, it is considered that those concerns need to be weighed against the ability for Councillors to be readily responsive to constituent needs. It is recommended that 10 clear days will allow a matter to be raised after a Council meeting and dealt with at the following meeting.

In terms of Section 3.13 of the Act if, during the procedure for making a proposed local law, Council decides to make a local law that would be significantly different to what it first proposed, the law making process has to be recommenced. It is considered that the abovementioned modifications to the original version of the Proposed Local Law will add clarity to the text of the proposed local law, ensure consistency with relevant legislation and avoid any concerns which parliament may have had with the wording of the original version. These modifications do not change the purpose, intent and effect of the original version of the Proposed Local Law. Therefore the Proposed Local Law is not considered to be significantly different from what was first proposed.

## **CONCLUSION**

The Proposed Local Law incorporates improvements to the current local law based on the new WALGA model, other local governments which have recently updated their standing orders, and includes other changes deemed suitable specifically for the City of Busselton.

For these reasons it is recommended that the Council make the Proposed Local Law, as found in Attachment 2.

**OPTIONS**

In addition to the Officer's recommendations (as per Officer Recommendations 1, 2 and 3 below), the Council has the following alternative options regarding standing orders:

Option 1

Not to proceed with the local law-making process and rely on the current local law to regulate meeting procedures. However, certain provisions have been identified as in need of change, for example in relation to "En Bloc" resolutions, and it is recommended to update and improve the current local law for the reasons stated in the report.

Option 2

Council could choose to vary the provisions of the Proposed Local Law in any number of ways. If any changes are of a significant nature the amended proposed local law would need to be re-advertised.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Should Council resolve to make the Proposed Local Law it will need to be gazetted and will come into operation 14 days after publication. The timeframe for completion of the gazettal process is approximately thirty days from the date of the Council resolution.

**COUNCIL DECISION/COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION****C1803/042**

Moved Councillor R Paine, seconded Deputy Mayor McCallum

**ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

That the Council:

1. Resolves to make the *City of Busselton Standing Orders Local Law 2018* in accordance with section 3.12(4) of the *Local Government Act 1995*.
2. Authorises the Chief Executive Officer to carry out the processes required to make the *City of Busselton Standing Orders Local Law 2018* in accordance with section 3.12(5) and section 3.12(6) of the *Local Government Act 1995*.

**CARRIED 8/0**

## **11. PLANNING AND DEVELOPMENT SERVICES REPORT**

### **11.1 LOCATION OF AMBERGATE VOLUNTEER BUSHFIRE BRIGADE SHED - CONSIDERATION AFTER CONSULTATION**

<b>SUBJECT INDEX:</b>	Bush Fire Control and Emergency Services
<b>STRATEGIC OBJECTIVE:</b>	A friendly safe and inclusive community with a strong community spirit.
<b>BUSINESS UNIT:</b>	Environmental Services
<b>ACTIVITY UNIT:</b>	Ranger and Emergency Services
<b>REPORTING OFFICER:</b>	Manager Environmental Services - Tanya Gillett
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Absolute Majority
<b>ATTACHMENTS:</b>	Attachment A Ambergate BFB Shed - Site Locations ⇨ Attachment B Ambergate BFB Shed - Change of Scope ⇨

#### **PRÉCIS**

The Council is asked to identify the preferred site for development of a shed for the Ambergate Volunteer Bush Fire Brigade, and to support provision of funds to supplement external grant funds, which are no longer sufficient to complete the project. The Council is also asked to revoke portions of an earlier resolution that supported a site no longer recommended, as well as revoking other elements of that same resolution which are now at odds with current planning.

#### **BACKGROUND**

After a period of community consultation, the Council is asked to consider the location of a proposed shed to accommodate the Ambergate Volunteer Bush Fire Brigade (VBFB). Currently, the VBFB, which has a single appliance only, operates from private property. The City has received a \$123,307 grant from the Department of Fire and Emergency Services (DFES), through the Local Government Grants Scheme (LGGS), to build a new facility for the VBFB to operate from. The grant was first received in the 2014/15 financial year, but implementation of the project has been delayed largely through uncertainties associated with the location of the new facility, with the funds being rolled over until the current financial year.

Council previously considered the location of the Ambergate Fire Shed on 27 April 2011 and resolved to locate it on the Ambergate Hall site (reserve 28149) as follows:

#### **COUNCIL DECISION 1**

*C1104/141*

*That the Council:*

- 1. Authorise the CEO to carry out the necessary site investigations as soon as possible with the objective of finding an early resolution to the contamination issue. The cost of engaging the consultant is to be funded from the strategic projects reserve fund.*

**COUNCIL DECISION 2**

## 1. C1104/142

*That the Council:*

2. *accept the Busselton Pistol Club's offer of \$500.00 towards the proposed site investigation report.*
3. *subject to receipt of approval from DEC, the Busselton Pistol Club to be requested to remove any known lead contamination from the site.*
4. *support the Busselton Pistol Club Inc proposal to construct a pistol club building on a portion of Reserve 28419 on the clear understanding that the facility is to be used for firing only air pistols and subject to the resolution of the contamination issue referred to in item 1 above.*
5. *support the proposal from the Ambergate Volunteer Fire Brigade to construct a bush fire brigade shed and training room on a portion of land on Reserve 28419 subject to the resolution of the contamination issue referred to in item 1 above.*
6. *authorise the CEO to prepare a master plan for the future use of Reserve 28419 showing the location of the proposed pistol club building and the bush fire brigade shed and training room only.*
7. *subject to the consent of the Minister for Lands, allow the Club to remain in occupation of the portion of Reserve 28419 that occupies the current indoor firing range on a monthly basis under the holding over provisions of the lease dated 24 February 1989, on the condition that the Club shall have access to the indoor shooting range and toilets only. The holding over to cease when the proposed pistol club building is completed.*
8. *agree to enter into a 21 year lease (standard lease) with the Busselton Pistol Club for portion of Reserve 28419 to accommodate the proposed pistol club building subject to the resolution of the contamination issue referred to in item 1 above.*

Councillors will be aware that some other aspects of the above resolutions are either inconsistent with current direction, or have not been fully implemented. Most significantly, earlier this year, the Busselton Pistol Club withdrew an application for development approval to construct a new facility on the Ambergate Hall site. The Club and City are currently seeking to identify and investigate alternative sites. Note this does not affect the Busselton Pistol Club's use of the Ambergate Hall site for their current use of the indoor firing range.

In addition, whilst site remediation investigations have advanced, the Ambergate Hall site has not been remediated. Investigations undertaken to date, in fact, indicate that it may not be economic to remediate the site to allow 'unrestricted use' – i.e. the level of remediation that may be required to allow for general community use. DFES have also indicated a preference that the new facility be constructed on a site that is not contaminated.

Once Council has made a decision regarding the location of the new VBFB facility and remediation investigations are further advanced, it is anticipated that a further report would be presented to the Council to determine the ultimate direction in terms of the remediation of the Ambergate Hall site.



Once investigations to identify an alternative site for the Busselton Pistol Club have advanced further, it is likely that a further report will also be required to obtain Council's formal position with respect to any alternative site. This report and its recommendations, however, are limited to determining the location of the new VBFB facility only, and resolving inconsistencies between current direction and Council's earlier decision with respect to the Pistol Club.

Officers are recommending that the new facility be built towards the north-eastern corner of 'Apex Park' (Reserve 50288), within the Ambergate Heights estate. The rationale for the officer position is outlined and discussed in the 'Officer Comment' section of this report. Plans identifying the various sites considered are provided as **Attachment A**.

## **STATUTORY ENVIRONMENT**

Key statutory environment is set out in the *Local Government Act 1995* and *Local Government (Administration) Regulations 1996*. Pursuant to Regulation 10 (1) (b) of the Regulations, the Council can only consider a motion to revoke or change an earlier decision if (in the case of where more than three months has elapsed since the making of the earlier decision), at least one third of the members of the Council has indicated their support to do so. At least three Councillors must therefore indicate their willingness to consider Recommendation 1 before it can be considered. Pursuant to Regulation 10 (2) (b), Recommendation 1 also requires an absolute majority decision. Recommendation 2 cannot be considered unless and until Recommendation 1 has been adopted by the Council. Recommendation 2 requires a simple majority only.

## **RELEVANT PLANS AND POLICIES**

There are no plans or policies requiring particular consideration in relation to this matter.

## **FINANCIAL IMPLICATIONS**

DFES first provided a grant for the building of the Ambergate Fire shed in the 2014/15 financial year, with the full funding amount having been rolled over annually since that time. Should the funds not be spent this financial year, there is a significant risk that DFES would not agree to a further deferral.

While DFES have provided a grant for \$123,307 for the purpose of constructing a fire shed consisting of 1 appliance bay facility and amenities, this grant does not include the cost of site works and providing utilities (power, water, effluent disposal and communications) to the site nor the costs associated with internal fitout. These costs remain the responsibility of the City and investigations have revealed that these additional costs have never been and are currently still unbudgeted. It is also noted that there has been an escalation in costs during the intervening period.

A shortfall of at least \$80,000 is currently estimated. It is recommended that once a decision is made about the location, the City seek to properly identify how much additional money will be required, and seek to allocate those funds in the current financial year.

The alternative would be to relinquish the grant, and submit a revised application to the next round of the LGGs, which closes in late March, and, if successful, consider any other budgetary implications as part of 2018/09 budget development. There would, however, be no guarantee of success with such an application.

There have additionally been discussions with regards to an expanded facility / scope which would improve operational functionality and enable greater opportunity to include community use of the building. Preliminary costings for an expanded facility indicate a figure of circa \$310,000. Plans illustrating the original project scope and the expanded scope are provided as **Attachment B**. While it is intended that the project be built to the original scope, expansion could be contemplated in future.

### **Long-term Financial Plan Implications**

Operating costs associated with Bush Fire Brigades are generally met through the LGGS, there are no long-term financial planning implications.

### **STRATEGIC COMMUNITY OBJECTIVES**

This proposal aligns with the City of Busselton Strategic Community Plan 2017 as follows:

- Key Goal Area 1 – Community - Welcoming, friendly, healthy – A friendly, safe and inclusive community with a strong community spirit
- Key Goal Area 2 –Vibrant, attractive, affordable – Planning strategies that foster the development of neighbourhoods that meet our needs as we grow
- Key Goal Area 6 – Leadership – Visionary, collaborative, accountable – Council engages broadly and proactively with the community

### **RISK ASSESSMENT**

An assessment of the potential risks of implementing the officer recommendation has been undertaken using the City's risk assessment framework. The assessment sought to identify 'downside' risks only rather than 'upside' risks.

The only risk identified of a medium or greater level is a reputational one, noting that a percentage of the community has expressed a desire for the fire shed to be constructed on the Ambergate Hall site. While reputational risk has therefore been identified as medium level risk, officers are of the view that some of the concerns expressed related to not wanting the Busselton Pistol Club to remain on the Ambergate Hall site.

### **CONSULTATION**

Consultation was conducted with the Ambergate community between 1 October 2017 and 14 November 2017. A survey was available both online and in hard copy and a letter was sent to all landowners within the Ambergate Heights estate, informing them of the survey options. An onsite consultation session was also held at Apex Park on Saturday, 4 November 2017, with approximately 40 residents attending plus representatives from the VFBF.

From the 137 letters sent out, 32 people responded to the survey, a response rate of 23%. The results in terms of site preferences are summarised in the table below:

• Site	• Result
• Site 2, located in the north-western part of Apex Park	• 15%
• Site 1, located in the north-eastern part of Apex Park	• 18%
• Neither Site	• 65%

While a large number of respondents selected neither site, this needs to be tempered with the reasoning respondents provided. It is believed that community concern at the time around the Busselton Pistol Club and its location on the Ambergate Hall site resulted in many of the negative responses to the Apex Park location, with 53 percent advising that they believed the fire shed should be located on the Ambergate Hall site, for reasons such as the pistol club on that site is an inappropriate use of the land, that it is a better option than the pistol club and that they would support the bush fire brigade on that site purely so the pistol club wasn't situated at that location. It should be noted that, whilst it is not currently proposed, both the VBFB and Pistol Club could fit on the Ambergate Hall site.

Other reasons noted included:

- Emergency vehicles being adjacent to the children's playground
- Emergency vehicles speeding near to homes and where children may be playing
- Water logging of the site during winter
- There being direct arterial road access from the Ambergate Hall site

The majority of the Ambergate Bush Fire Brigade volunteers actually reside within the Ambergate community and hence officers do not feel the location of the fire shed at Apex Park would significantly increase the number of vehicles driving within the Estate. The congregation of the available volunteers at the fire shed due to a call out would be the only impact. The lights and sirens on the fire appliance would not be activated until the appliance was on Ambergate Road and therefore its location at Apex Park would not result in an increase in light or noise issues. The other issues outlined above as reasons to favour the Ambergate Hall site are not seen as being significant issues.

#### **OFFICER COMMENT**

Given the protracted and complicated history associated with the Ambergate Hall site, the Busselton Pistol Club's use of that site, both historic and once proposed, as well as providing a facility for the VBFB, it is seen as important that these matters move towards resolution. The withdrawal of the Busselton Pistol Club's development application for a new facility on the Ambergate Hall site has resolved some of the uncertainty, and should significantly reduce community angst associated with that proposal. The Council is accordingly asked to revoke those aspects of its earlier resolutions that are now at odds with the current direction of the Pistol Club and the City.

Recent events also allow for the Pistol Club and VBFB site selection issues to be looked at separately, whereas that has not really been possible in the past.

With respect to the Ambergate community, the remaining issues of interest are essentially related to the contamination/remediation of the Ambergate Hall site, as well as developing a facility for the VBFB – with the next step in that respect being the identification of the preferred site for the VBFB.

Officers are recommending that the new facility be built towards the north-eastern corner of Apex Park, within the Ambergate Heights estate. While there does appear to be some community preference that the VBFB is located on the Ambergate Hall site, it is not clear how much of that was related to angst in relation to the Pistol Club proposal, which was still very much a ‘live’ proposal in November 2017, when the consultation on the VBFB site took place.

It is also not clear that, given the potential challenges and costs that may be involved in remediating the site, whether it is a suitable site for a facility that is likely to eventually develop a broader purpose, incorporating broader community use. This kind of model, where a fire facility forms the nucleus of a broader community hub, has worked well elsewhere, including Yallingup and Eagle Bay.

The Apex Park site is also more central to the Ambergate community than the Ambergate Hall site, and is considered more appropriate in that respect from both a brigade and broader community use perspective.

Finally rather than defer the project until a subsequent financial year, it is also seen as preferable to utilise the existing grant, with some potential to allocate additional required funding, up to a maximum of \$80,000.

As there is a previous Council resolution to support the Ambergate Hall site, before the Council can consider the Apex Park site, it must first revoke the relevant parts of its earlier decision, namely parts 4, 5, 6 and 8.

## **CONCLUSION**

For the reasons outlined in the report, it is recommended the Council support the Apex Park Site 2 (toward the north-eastern corner of the site). It is also recommended that the Council revoke those parts of its earlier decision no longer consistent with current or recommended direction.

Some further work is required to refine the project scope and costs and identify what additional funding may be required. To avoid the need for a further report, the recommendation provides for allocation of up to an additional \$80,000 to allow the project to proceed this financial year.

## **OPTIONS**

The options to the Council are essentially as follows –

1. Identify a different preferred site (i.e. the other Apex Park option, or the Ambergate Hall site); and/or
2. Defer the project pending a new LGGs application; or

3. Not allocate any additional funding (although it is not considered that a worthwhile project can be undertaken just utilising the existing external funding); or
4. Not proceed with a shed to accommodate the Ambergate VBFB (although this option is not considered tenable by officers).

#### **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Should the Council support the officer recommendation, construction would be completed prior to the end of the financial year.

**Note:**

*The Mayor requested Councillors to indicate if they would be prepared to support a revocation Motion as outlined below. The Councillors unanimously supported the consideration of the Revocation Motion.*

**COUNCIL DECISION AND OFFICER RECOMMENDATION****C1803/043** Moved Councillor R Reekie, seconded Councillor L Miles

**Note:** *The Council can only consider a motion to revoke or change its earlier decision if at least one third of the members of the Council has indicated their support to do so. At least three Councillors must therefore indicate their willingness to consider Recommendation 1 before it can be considered.*

**RECOMMENDATION 1 (Absolute majority required)**

That the Council agree that part 4, 5, 6, and 8 of resolution C1104/142 adopted by Council on the 27 April 2011 which reads as follows –

*4. support the Busselton Pistol Club Inc proposal to construct a pistol club building on a portion of Reserve 28419 on the clear understanding that the facility is to be used for firing only air pistols and subject to the resolution of the contamination issue referred to in item 1 above.*

*5. support the proposal from the Ambergate Volunteer Fire Brigade to construct a bush fire brigade shed and training room on a portion of land on Reserve 28419 subject to the resolution of the contamination issue referred to in item 1 above.*

*6. authorise the CEO to prepare a master plan for the future use of Reserve 28419 showing the location of the proposed pistol club building and the bush fire brigade shed and training room only.*

*8. agree to enter into a 21 year lease (standard lease) with the Busselton Pistol Club for portion of Reserve 28419 to accommodate the proposed pistol club building subject to the resolution of the contamination issue referred to in item 1 above.*

be revoked.

**RECOMMENDATION 2 (Absolute majority required)**

That the Council –

1. Endorse the construction of a shed for the Ambergate Volunteer Bushfire Brigade on Apex Park, Reserve 50288, Lot 2002, Pinnacle Avenue, Ambergate, generally in the location identified as Site 2 in Attachment A to the agenda report; and
2. Allocate up to an additional \$80,000 to the project from the 2017/18 financial year budget, to be funded via a reduction in account 100-10001-3680 – “Budget Surplus Contingency Holding Account” of \$53,805 and account 100-10001-3678 – “CEO Discretionary Funding” \$26,195.

**CARRIED 8/0**

Note: The Council agreed to Recommendation 1 before voting on Recommendation 2.

## **12. ENGINEERING AND WORKS SERVICES REPORT**

### **12.1 AWARD OF TENDER RFT 01/18 MANUFACTURE AND INSTALLATION OF THE BUSSELTON FORESHORE PLAY SPACE**

<b>SUBJECT INDEX:</b>	Busselton Foreshore Play Space
<b>STRATEGIC OBJECTIVE:</b>	A community with access to a range of cultural and art, social and recreational facilities and experiences.
<b>BUSINESS UNIT:</b>	Major Projects
<b>ACTIVITY UNIT:</b>	Major Projects
<b>REPORTING OFFICER:</b>	Major Projects Superintendent - Jan Hopper
<b>AUTHORISING OFFICER:</b>	Director, Engineering and Works Services - Oliver Darby
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Confidential Tender Evaluation & Recommendation – RFT01/18 Manufacture and Installation of the Busselton Foreshore Play Space

#### **PRÉCIS**

The Council is requested to consider the tenders received in response to Request for Tender RFT01/18 for manufacture and installation of the Busselton foreshore play space (RFT). The RFT has now closed and submissions have been received and evaluated. This report summarises the submissions received and recommends that Council endorse the outcome of the evaluation panel's assessment, which selected the tender submitted by Phase 3 Landscape Constructions Pty Ltd as being the best valued tender, and delegate authority to the CEO to negotiate and agree final terms and conditions with, and to award a contract for a finalised lump sum price, to Phase 3 Landscape Constructions Pty Ltd for the manufacture and installation of Busselton foreshore play space.

#### **BACKGROUND**

The City of Busselton's 2017/18 capital works program includes provision for the construction of an all ages children's play space, located within the Busselton foreshore precinct in between the Equinox Restaurant and Bar and Railway House, Busselton (the Play Space).

The Play Space is a key element contained within the Busselton Foreshore Master Plan and specifically the high amenity area currently under construction.

#### **STATUTORY ENVIRONMENT**

In terms of Section 3.57 of the Local Government Act 1995 (Act) a local government is required 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 Local Government (Functions and General) Regulations 1996 (**Tender Regulations**):

requires that tenders be publicly invited for such contracts where the estimated cost of providing the required goods and/or service exceeds \$150,000; and under Regulations 11, 14, 18, 20 and 21A provides the statutory framework for inviting and assessing tenders and awarding contracts pursuant to this process.

Officers have complied with abovementioned legislative requirements in relation to this RFT.

## RELEVANT PLANS AND POLICIES

The City's Busselton Foreshore Master Plan includes the installation of an all ages play space within the Busselton Foreshore Jetty Precinct between the Equinox Restaurant and the Goose Restaurant.

The City's purchasing, tender selection criteria, occupational health and safety and engineering technical standards and specifications, were all relevant to this tender and have been considered in the process of requesting and evaluating tenders.

## FINANCIAL IMPLICATIONS

The project is funded through a combination of grant funding (Building Better Regions Fund), loan borrowings and municipal funds. The total budget for the delivery of the works is \$1,650,000 excluding GST. Excluding consultant allowances and contingency, the available budget for construction works is approximately \$1,560,000 ex GST.

Based on the delivery of the full scope of works in the RFT, the preferred tender contract value was \$2,039,000 (ex GST), which is \$479,000 ex GST above budget.

As part of the evaluation process, tenderers were requested to clarify their responses and provide options to value engineer their proposals. Focus for this process was to review opportunities to reduce cost without reducing the overall aesthetic, functionality and quality of the project. The preferred tenderer provided a list of potential items which included:

- Reduction and substitution of softfall. This included the replacement in areas with white sand and an alternative product;
- Sourcing material from local sources including concrete and rockwork;
- Utilisation of material recycled from the City including Jetty timber;
- Reduction in some elements while not significantly impacting functionality;
- Substitution of lighting controls with more cost effective equipment while retaining functionality;
- Removal of whale head allowing for future installation when funds become available. It is noted that this element did not form part of the original brief and was an addition made during the design process;

Based on the scope of works excluding the items above, the contract amount would be \$1,640,000 ex GST. While this is still in excess of the available budget by approximately \$80,000, it is recommended by the evaluation panel that the CEO be permitted to further negotiate with the preferred tenderer and engage them if budget and scope constraints can be agreed.

### Long-term Financial Plan Implications

The required funding will be incorporated in the 2018/19 budget and Long Term Financial Plan onwards.

## STRATEGIC COMMUNITY OBJECTIVES

The construction of the Play Space is consistent with Key Goal Area 1 (Community) and 2 (Places and Spaces) of the Strategic Community Plan 2017, and specifically the following Community Objectives:

- 1.3 – A community with access to a range of cultural and art, social and recreational facilities and experiences;
- 2.2 – Attractive parks and open spaces that create opportunities for people to come together, socialise and enjoy a range of activity.



## RISK ASSESSMENT

The only risk identified of a medium or greater level is related to budget (medium risk). The costs associated with construction are currently more than the project funding available. The Officer recommendation however seeks the ability for the CEO to negotiate further with the preferred tenderer and engage them if budget and scope constraints can be agreed. Once agreed there will be continual and close monitoring and management of variations.

## CONSULTATION

The RFT was issued to short listed tenderers on the 8<sup>th</sup> January 2018 following a statutory Expression of Interest (EOI) process for making a preliminary selection among prospective tenderers. This EOI was advertised in the West Australian newspaper and the City of Busselton tenders website (Tenderlink) on Saturday 28<sup>th</sup> October 2017. Following completion of the EOI process, the successful shortlisted contractors were invited on 21 December 2017 to submit tenders via Tenderlink.

The project forms part of the overall Busselton Foreshore redevelopment, the Masterplan for which was developed in consultation with the community. The project will be sign posted on the Busselton Foreshore providing information on timeline and scope.

Key stakeholders such as the owners of the Equinox, the Goose, BJECA and MRBTA have been regularly consulted and are being kept informed.

## OFFICER COMMENT

1. The City issued request for tender documents to five (5) potential respondents and received a total of four (4) submissions from: Perkins (WA) Pty Ltd T/A Perkins Builders (Corporation), Environmental Industries PTY Ltd, Phase Three Landscape Constructions Pty Ltd and Total Eden Pty Ltd T/A Landscape Australia. Earthcare (Australia) Pty Ltd T/A Earthcare Landscapes were invited however did not submit a tender.

The tender assessment was carried out by a tender evaluation panel consisting of Meg Delahoy – Manager Major Projects and Facilities, Jan Hopper - Senior Consultant Major Projects (panel chair), Cobus Botha – Legal Officer and Bruce Thomas – Landscape Architect. A copy of all documentation was provided to each member of the tender review panel for assessment. Consultant architects, Plan E were consulted during this process and provided feedback to the evaluation panel.

Tenders were evaluated using the tendered prices and information provided by tenderers in response to the specified qualitative criteria and clarifications sought. A scoring and weighting system was used to assess the tendered prices and qualitative criteria, with weightings allocated in accordance with the relative degree of importance that the City placed on each. The extent to which a tender demonstrated greater satisfaction of each of these qualitative criteria resulted in a greater score.

The tenders were assessed based on the following selection criteria and weightings:

- Relevant Experience 10%
- Key Personnel Skills and Experience 5%
- Tenderer's Resources 5%
- Demonstrated Understanding 20%
- Price 60%

The evaluation panel members individually assessed the tenders and then applied an average to provide a final rating. The scores were then added together to indicate the rankings for the tender.

The tender evaluation resulted in the tender from Phase 3 Pty Ltd being ranked first overall and therefore considered to be the best value for money for the City. The attached confidential Tender Evaluation and Recommendation report (Attachment A) provides the detailed evaluation outcome.

### **CONCLUSION**

The tender evaluation panel has completed their assessment of the RFT in line with the City's tender process and Officers now recommend that Council endorse the outcome of the evaluation panel's assessment and nominate the tender submitted by Phase 3 Landscape Constructions Pty Ltd as being the best value tender and delegate authority to the CEO to negotiate and agree final terms and conditions with and to award a contract for a finalised lump sum price to Phase 3 Landscape Constructions Pty Ltd for the manufacture and Installation of Busselton Foreshore Play Space.

### **OPTIONS**

The Council may consider the following alternate options:

1. The Council chooses not to accept the Officers Recommendation and award the RFT to an alternative tenderer. In the view of the Officer's this could result in the RFT being awarded to a tenderer that is not most advantageous to the City.
2. The Council may choose not to accept the Officers Recommendation and not award the RFT. This would mean going back out to tender, resulting in significant delays to the contract award and potential significant delays to the development of the Busselton Foreshore.

For the reasons provided in this report abovementioned options are not recommended.

### **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The selection of the preferred tenderer can be made immediately after the Council has endorsed the Officer's recommendation. Subject to negotiation and agreement on scope and budget the successful tenderer will then receive formal written notification. All tender applicants not selected as preferred will also be notified at this time.

### **COUNCIL DECISION AND OFFICER RECOMMENDATION**

**C1803/044** Moved Councillor L Miles, seconded Deputy Mayor McCallum

### **ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

That the Council:

1. Endorse the outcomes of the evaluation panel's assessment in relation to Tender RFT01/18 –Manufacture and Installation of Busselton Foreshore Play Space, which has resulted in the tender submitted by Phase 3 Landscape Constructions Pty Ltd being recommended as the most advantageous to the City.
2. Delegate authority to the CEO to negotiate and agree final terms and conditions with and to award a contract for a finalised lump sum price to Phase 3 Landscape Constructions Pty Ltd for the manufacture and installation of Busselton foreshore play space in accordance with the terms and conditions contained within RFT01/18.
3. For purposes of:
  - a. finalising negotiations and awarding a contract pursuant to resolutions 2 above; and
  - b. execution of the contract and successful delivery of the project,

delegate authority to the CEO to negotiate and agree on variations in accordance with Regulations 20 and 21A of the *Local Government (Functions and General) Regulations 1996* subject to such variations not to exceed the overall project budget.

**CARRIED 8/0**

**13. COMMUNITY AND COMMERCIAL SERVICES REPORT**

Nil

**14. FINANCE AND CORPORATE SERVICES REPORT**

Nil

## 15. CHIEF EXECUTIVE OFFICER'S REPORT

### 15.1 COUNCILLORS' INFORMATION BULLETIN

<b>SUBJECT INDEX:</b>	Councillors Information
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Governance Services
<b>ACTIVITY UNIT:</b>	Governance Services
<b>REPORTING OFFICER:</b>	Administration Officer - Governance - Katie Dudley
<b>AUTHORISING OFFICER:</b>	Chief Executive Officer - Mike Archer
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A <a href="#">Planning &amp; Development Services Statistics</a> Attachment B <a href="#">Planning &amp; Development Services Statistics</a>

DISCLOSURE OF INTEREST	
<b>Date</b>	14 March 2018
<b>Meeting</b>	Council Meeting
<b>Name/Position</b>	Mike Archer, CEO
<b>Item No./Subject</b>	15.1 Councillors Information Bulletin
<b>Type of Interest</b>	Financial Interest
<b>Nature of Interest</b>	I wish to disclose a financial/proximity interest in item 15.1 due to a development application (DA18/0133) being received by the COB planning department for an adjoining property I own at 41 Reading Street, Busselton.

5.48pm At this time the CEO left the meeting.

### PRÉCIS

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

#### 15.1.1 Planning & Development Services Statistics

Attachment A is a report detailing all Planning Applications received by the City between 1 February, 2018 and 15 February, 2018. A total of 65 formal applications were received during this period.

Attachment B is a report detailing all Planning Applications determined by the City between 1 February, 2018 and 15 February, 2018. A total of 44 applications (including subdivision referrals) were determined by the City during this period with 44 approved / supported and 0 refused / not supported.

## **15.1.2 Current Active Tenders**

### **2017/2018 TENDERS**

#### **RFT19/17 SUPPLY AND DELIVERY OF CONCRETE SERVICES**

The City of Busselton invited tenders for the supply of concrete and ancillary works to the City of Busselton. The tender was advertised on 11 November 2017, with a closing date of 28 November 2017. A total of 2 tenders were received. Under Regulation 18(5) of the *Local Government (Functions and General) Regulations 1996* a local government may decline to accept any tender. The evaluation was completed and under Delegation LG3J the CEO declined to accept any tender as it was considered that the tenders received did not present best value for money. The City will again be inviting tenders for the supply of these goods and services as soon as practicable.

#### **RFT20/17 DESIGN AND CONSTRUCTION OF AIRPORT TERMINAL AT BUSSELTON- MARGARET RIVER REGIONAL AIRPORT**

The City of Busselton invited tenders for the design and construction of the airport terminal at Busselton-Margaret River Airport. The tender was advertised on 29 November 2017, with a closing date of 9 January 2018. A total of 4 tenders were received. The value of the contract will exceed the CEO's delegated authority. The evaluation has been completed and Council resolved at its 31 January 2018 meeting to delegate to the CEO authority to negotiate and agree final terms and conditions with and to award a contract to Pindan Constructions Pty Ltd. Pursuant to this Council resolution, the CEO awarded under delegation the contract for design and construction of the airport terminal to Pindan Constructions Pty Ltd.

#### **RFT21/17 CONSTRUCTION OF WATER DISTRIBUTION MAIN ALONG THE EASTERN PORTION OF RENDEZVOUS ROAD, VASSE**

The City of Busselton invited tenders for the construction of the water distribution main along the eastern portion of Rendezvous Road, Vasse. The tender was advertised on 2 December 2017, with a closing date of 19 December 2017. A total of 4 tenders were received and one alternative tender. The evaluation has been completed and the contract awarded by the CEO under delegated authority to Craneford Plumbing Pty Ltd.

#### **RFT23/17 DESKTOP COMPUTER REPLACEMENT PROGRAM**

The City of Busselton invited tenders for the replacement of the City of Busselton's desktop computers. The tender was advertised on 9 December 2017, with a closing date of 9 January 2018. A total of 3 tenders were received. The evaluation has been completed and Council resolved at its 14 February 2018 Council meeting to delegate authority to the CEO to negotiate and agree final terms and conditions with and to award a contract to DELL Australia Pty Ltd. Council also resolved to authorise the CEO to procure funding for the City of Busselton Computer Desktop Replacement Program. Pursuant to this Council resolution, the CEO awarded under delegation the contract for the replacement of the City of Busselton's desktop computers to DELL Australia Pty Ltd. The City of Busselton has invited quotations for the funding of the City of Busselton Computer Desktop Replacement Program through WALGA e-Quotes.

#### **RFT24/17 PROVISION OF TRAFFIC MANAGEMENT SERVICES**

The City of Busselton invited tenders for the provision of traffic management services within the City of Busselton. The tender was advertised on 16 December 2017, with a closing date of 16 January 2018. A total of 7 tenders were received.

The value of the contract will exceed the CEO's delegated authority. The evaluation has been completed and a recommendation report will be presented to Council in March 2018.

### **RFT01/18 MANUFACTURE AND INSTALLATION OF BUSSELTON FORESHORE PLAY SPACE**

Following an Expressions of Interest (EOI 01/17) process for making a preliminary selection among prospective tenderers, the City of Busselton invited tenders for the manufacture, construction and installation of a new play space located within the Busselton foreshore precinct in between the Equinox Restaurant and Bar and Railway House, Busselton. The following five (5) tenderers were invited to submit a tender:

<b>1. Company</b>	<b>2. Location</b>
Earthcare (Australia) Pty Ltd T/A Earthcare Landscapes	Bibra Lake, Perth
Environmental Industries Pty Ltd	Canning Vale, Perth
Perkins (WA) Pty Ltd T/A Perkins Builders (Corporation)	Bunbury and Busselton
Phase Three Landscape Constructions Pty Ltd	O'Connor, Perth
Total Eden Pty Ltd T/A Landscape Australia	Bibra Lake, Perth

The tender closed on 30 January 2018. A total of 4 tenders were received. The evaluation has been completed and a recommendation report will be presented to Council in April 2018.

### **RFT02/18 CITY OF BUSSELTON COASTAL ADAPTATION STRATEGY**

The City of Busselton invited tenders for the City of Busselton Coastal Adaptation Strategy. The tender was advertised on 6 January 2018, with a closing date of 13 February 2018. A total of 4 tenders were received. The value of the contract is not expected to exceed the CEO's delegated authority. It is anticipated the evaluation will be completed and a recommendation report presented to the CEO in March 2018.

### **RFT03/18 CRUSHING SERVICES FOR CONSTRUCTION AND DEMOLITION MATERIAL WITHIN CITY OF BUSSELTON**

The City of Busselton invited tenders for crushing services for construction and demolition material within the City of Busselton. The tender was advertised on 3 February 2018, with a closing date of 27 February 2018. The value of the contract is not expected to exceed the CEO's delegated authority. It is anticipated the evaluation will be completed and a recommendation report presented to the CEO in March 2018.

### **RFT04/18 SUPPLY AND DELIVERY OF IRRIGATION COMPONENTS**

The City of Busselton invited tenders for the supply and delivery of irrigation components to the City of Busselton. The tender was advertised on 24 February 2018, with a closing date of 20 March 2018. The value of the contract is not expected to exceed the CEO's delegated authority. It is anticipated the evaluation will be completed and a recommendation report presented to the CEO in early April 2018.

### **COUNCIL DECISION AND OFFICER RECOMMENDATION**

**C1803/045** Moved Councillor P Carter, seconded Deputy Mayor McCallum

That the items from the Councillors' Information Bulletin be noted:

- 15.1.1 Planning & Development Services Statistics
- 15.1.2 Current Active Tenders

**CARRIED 8/0**

**16. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil

**17. CONFIDENTIAL REPORTS**

Nil

**18. QUESTIONS FROM MEMBERS**

Nil

**19. PUBLIC QUESTION TIME**

Nil

**20. NEXT MEETING DATE**

Wednesday, 28 March 2018

**21. CLOSURE**

The meeting closed at 5.50pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 55 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 28 MARCH 2018.

DATE: \_\_\_\_\_

PRESIDING MEMBER: \_\_\_\_\_