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## CITY OF BUSSELTON

### MINUTES FOR THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 26 JUNE 2018

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## MINUTES

MINUTES OF A MEETING OF THE POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 26 JUNE 2018 AT 2.00PM.

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

The Presiding Member opened the meeting at 2.01pm.

### 2. ATTENDANCE

#### Presiding Member:

Cr Grant Henley

#### Members:

Cr Ross Paine

Cr Robert Bennett

Cr Lyndon Miles

Cr Coralie Tarbotton Deputy Member

#### Officers:

Mr Paul Needham, Director, Planning and Development Services

Mr Cliff Frewing, Acting Director, Community and Commercial Services

Mr Tony Nottle, Director, Finance and Corporate Services

Mrs Sharon Woodford-Jones, Property Management Coordinator

Mrs Tanya Gillett, Manager, Environmental Services

Ms Sarah Pierson, Manager, Governance and Corporate Services

Miss Kate Dudley, Administration Officer, Governance

Mrs Hayley Watson, Executive Assistant to Council

#### Apologies

Cr Kelly Hick

### 3. PUBLIC QUESTION TIME

Nil

### 4. DISCLOSURE OF INTERESTS

Nil

### 5. CONFIRMATION OF MINUTES

#### 5.1 Minutes of the Policy and Legislation Committee Meeting held 29 May 2018

#### COMMITTEE RECOMMENDATION



**PL1806/192** Moved Councillor R Paine, seconded Councillor R Bennett

That the Minutes of the Policy and Legislation Committee Meeting held 29 May 2018 be confirmed as a true and correct record.

**CARRIED 5/0**

## 6. REPORTS

### 6.1 REVIEW OF COUNCIL DELEGATION LG3C

<b>SUBJECT INDEX:</b>	Authorised Delegation of Power/Authority
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	Property Services
<b>REPORTING OFFICER:</b>	Property Management Coordinator - Sharon Woodford-Jones
<b>AUTHORISING OFFICER:</b>	Director Finance and Corporate Services - Tony Nottle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Amended Delegation LG3C  Attachment B New Instrument of Delegation LG3C 

2.07pm At this time the Manager of Governance and Corporate Services entered the meeting.

#### **PRÉCIS**

It is proposed to amend Delegation LG3C, Disposing of Property, to broaden the scope of the delegation to include leases or licences over minor portions of land or buildings which may not have been leased before. This would be subject to the introduction of an informal reporting process. The intention of the delegation will not change.

#### **BACKGROUND**

Council has the ability to delegate powers and the discharge of duties to its Chief Executive Officer. These delegations are required to be reviewed by the delegator (in this case the Council) at least once in every financial year.

In June 2017 Council were asked to consider changes to Council Delegation LG3K – Acquiring and Disposing of Property. The desired outcomes were to distinguish between acquisition and disposal and place parameters around the disposition of property by way of lease or licence and the sale of other property.

Council therefore resolved (**C1706/151**) to cancel delegation LG3K – Acquiring and Disposing of Property and adopt two new Delegations LG3B – Acquiring of Property and Delegation LG3C - Disposal of Property.

Delegation LG3C is specific to the disposal of property by way of sale, lease or licence and the sale of other non-land or building related property. It prescribes the circumstances in which the delegation can be exercised through limitations on the value and purpose and by excluding the leasing or licencing of property that has not previously been leased.

Whilst the scope of Delegation LG3C is considered to be reasonable and practical in the exercise of the delegation, City Officers have recently encountered a number of scenarios which could have been properly and efficiently dealt with under delegation had the scope of LG3C been wider.

In response to recent direction from Council on the subject, City Officers are proposing amendments to the delegation, the reasons for which are expanded on in the Officer Comment section of this report.

## STATUTORY ENVIRONMENT

Section 5.42 of the *Local Government Act 1995* (the Act) provides the Council with the ability to delegate powers and duties to its CEO; such delegation must be in writing. Some powers and duties cannot be delegated in accordance with Section 5.43 of the Act, such as matters that require an Absolute Majority decision of the Council.

In accordance with Section 5.18 of the Act the local government is required to keep a register of delegations and review them on an annual basis. Wherever a decision has been made under delegated authority, records of the decision must be kept in accordance with the *Local Government (Administration) Regulations 1996*.

## RELEVANT PLANS AND POLICIES

The Department of Local Government Sport and Cultural Industries (LGSCI) Operational Guidelines Number 17 – ‘Delegations’.

## FINANCIAL IMPLICATIONS

There are no financial implications involved in reviewing this delegation, however, utilisation of delegated authority creates organisational efficiencies. Without a system of delegated authority in place, a significant number of day-to-day local government decisions would need to be referred to Council as agenda reports. Having an effective delegated authority system in place reduces the turnaround time for some matters which allows for the Council to use its time to undertake its more strategic role.

### Long-term Financial Plan Implications

There are no direct Long-term Financial Plan implications associated with this review.

## STRATEGIC COMMUNITY OBJECTIVES

This delegation review aligns with and supports the **Council’s Key Goal Area 6** – ‘Leadership’ and more specifically **Community Objective 6.1** – ‘Governance systems, process and practices are responsible, ethical and transparent’.

## RISK ASSESSMENT

There are no risks associated with the Officer Recommendation identified as being of a medium or greater level.

## CONSULTATION

It is not considered that external consultation is necessary to vary the terms of the existing Delegation.

## OFFICER COMMENT

As the population of the district continues to expand, it can be expected that the demand for City land and buildings will increase commensurately. New facilities are being constructed to accommodate the increasing need for social and sporting activities and the related associations are being relocated either temporarily or permanently to accommodate longer term strategies.

Delegation LG3C presently applies only to situations involving leases to community groups over 'property' that has been leased before and where the permitted use is ancillary or consistent with the designated purpose. However, the Delegation does not extend to the less significant and smaller scale disposals such as leases of storage facilities, land or buildings where the land or building in question has not been leased previously. Council have indicated that they are supportive of making changes to the delegation to include such scenarios.

It is therefore proposed that the scope of Delegation LG3C be expanded to include scenarios such as those recently encountered at Churchill Park and the Sir Stewart Bovell Park. These scenarios concerned the need to lease part of an existing shed for temporary storage to the Girl Guides of WA at Churchill Park and four leases to user groups constructing new storage facilities on a small portion of Bovell Park. In each scenario, leases over other parts of the land (or 'property') already exist. Such leases could have been entered into under Delegation had the restriction in respect of property that had been leased before been given similar consideration.

Amending parts of Delegation LG3C will mean that leases or licences can be granted over land or buildings that have not been the subject of a lease or licence previously, provided they form part of land or a building that has already been leased or licenced. It is proposed that where this is the case, such land or buildings must form part of a recognised sporting or community facility.

Further amendments are recommended to reflect the direction of Council in relation to instances involving small portions of land or buildings in other scenarios i.e. not involving a community or sporting facility or land that has been leased before. Thus it is proposed that the Delegation specifically includes leases or licences of land or buildings with a maximum area of 100 square meters provided that other conditions, such as a the value of the disposition and consistency of purpose are applied.

The Delegation will also include a requirement that Council are notified periodically of the circumstances under which the delegation is exercised.

Review of the delegation for this purpose also presents an opportunity to make some minor changes to the composition and wording.

## **CONCLUSION**

The proposed changes to Delegation LG3C will assist in streamlining the process of issuing leases or licences where the impact is negligible in terms of the extent of the land or building in question. Controls will continue to apply in the form of conditions to which each lease or licence is subject and Council will be kept informed of the exercise of the delegation.

## **OPTIONS**

Council could decide to retain the delegation in its current form, may decide that it requires changes to the powers and discharge of duties to the Chief Executive Officer or choose to place alternative conditions on the delegation.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The Delegation will become effective the day following the decision of Council.

**OFFICER RECOMMENDATION**

That the Council:

1. Under section 5.42 of the Local Government Act 1995, agrees to amend Instrument of Delegation LG3C (Disposal of Property) in accordance with the revocations and additions as indicated within Attachment A; and
2. Adopts the amended Instrument of Delegation LG3C (Disposal of Property) within Attachment B as the delegation of those powers and duties to the CEO.

**COMMITTEE RECOMMENDATION**

**PL1806/193** Moved Councillor C Tarbotton, seconded Councillor R Paine

**ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

That the Council:

1. Under section 5.42 of the Local Government Act 1995, agrees to amend Instrument of Delegation LG3C (Disposal of Property) in accordance with the revocations and additions as indicated within Attachment A; and
2. Adopts the amended Instrument of Delegation LG3C (Disposal of Property) within Attachment B as the delegation of those powers and duties to the CEO with amendment to 1.a changing “and” to “or”.

**CARRIED 5/0**

2.18pm At this time the Property Management Coordinator left the meeting.

6.4 AL FRESCO AREAS AND STREET ACTIVATION IN THE BUSSELTON CITY CENTRE (ESPECIALLY QUEEN STREET) - REPORT ON OUTCOMES OF RECENT CONSULTATION AND PROPOSED DIRECTION

<b>SUBJECT INDEX:</b>	Activity Centre Plan – Busselton
<b>STRATEGIC OBJECTIVE:</b>	Creative urban design that produces vibrant, mixed-use town centres and public spaces.
<b>BUSINESS UNIT:</b>	Planning and Development Services
<b>ACTIVITY UNIT:</b>	Strategic Planning & Development
<b>REPORTING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Al Forno options 
	Attachment B 20-26 Queen Street proposal 
	Attachment C Al fresco examples 
	Attachment D Consultation Outcomes Report 
	Attachment E City Centre Aerial Photo 
	Attachment F Draft Policy 

Note: The Presiding Member bought item 6.4 forward for the convenience of Officers.

## PRÉCIS

The Council is asked to consider issues related to al fresco dining in the Busselton City Centre, Queen Street in particular, but not exclusively. The report follows and sets out the outcomes of recent consultation on those issues.

Because it is seen as a sound strategy in and of itself, and also appears to broadly reflect community views, it is considered that the Council should indicate broad support for facilitating more al fresco space in the City Centre, but mainly in a reversible and incremental/demand-driven fashion, even though that has to be at the expense of on-street parking that some in the community value. It is also considered that 'container' options for providing al fresco space should generally not be supported, but that the preferred form rather be in the form of timber decking or custom designed and built 'drop-in' structures.

It is recommended that the Council adopt a draft policy that would provide for that, and also address and provide guidance on some of the more detailed issues that require consideration. Note that the policy is not proposed as a local planning policy, it is proposed as a Council policy, and would guide the City's property functions, not the City's planning (or other regulatory) functions. At this stage, it is recommended that the policy be adopted as a draft only, and that further consultation take place before the Council considers adoption of a final policy.

## BACKGROUND

In recent times, the City has received several requests and proposals to accommodate al fresco areas associated with cafes/restaurants on Queen Street and/or premises where the owners are contemplating leases to cafes/restaurants. Because of the width and configuration of Queen Street (for most of its length), the only way that high usability al fresco areas can be accommodated is often through using space that is currently used for car parking. This can be seen by reference to the *Vasse Hotel*, which has an extensive al fresco area, but there is no on-street car parking in that section of the street.

Requests for al fresco areas that would require removal of car parking have been received from the proprietors of the *Al Forno* café/restaurant, in the section of Queen Street between Kent and Duchess Streets, and the owners of 20-26 Queen Street (which currently contains, amongst others, the *Dynasty Chinese* restaurant), in the section of Queen Street between Duchess and Adelaide Streets. Plans illustrating several options for provision of an al fresco area for *Al Forno* are provided as **Attachment A**. Plans for proposed modifications to 20-26 Queen Street, incorporating conversion of adjacent on-street car parking to al fresco area, are provided as **Attachment B**.

Over recent years, there have been informal discussions with several other proprietors and landowners. There has also been fairly consistent informal feedback from some in the general community and from many in the business community indicating that more should be done to facilitate and encourage al fresco and activation/activity in the City Centre generally. There are also concerns about car parking availability from some in the community, including from business owners.

The City and proprietor had spent some time investigating the options to accommodate an al fresco area for *Al Forno* (which currently has a small al fresco presence, consisting of tables and chairs on the footpath immediately in front of the premises). The City was looking to implement an option that would have involved the placement of a converted/adapted container, placed where there are currently parking bays adjacent to the pedestrian crossing point midway between Kent and Duchess Streets. The proposal would have involved the loss of two parking bays. It was expected that implementation would commence in late 2017. Because of the option being proposed, had it not been considered successful, it would have been relatively simple to remove the container.

Whilst in some other places, there are considered to be some successful and attractive container or other 'drop-in' al fresco arrangements, there are a number that City officers think are not particularly attractive. For that reason, it was envisaged that the first such proposal in Busselton would be best implemented by the City itself, rather than by a landowner or proprietor seeking the approval of the City to implement a proposal themselves. That was to ensure that the City would have direct control over the process and the design, and an essentially unfettered ability to remove the structure, should it be seen as appropriate to do so. Note that officers were of the view that the once preferred option for *Al Forno* required further refinement, and having given the matter further consideration, do not currently consider 'container' options are suitable for Queen Street, or generally in the City Centre more broadly.

Owing to concerns expressed by some other proprietors and landowners, the City decided not to proceed with the proposal in late 2017. Councillors requested that, before any further decisions were made, there be broader community consultation with respect to the value and priority to be attached to car parking relative to al fresco space on Queen Street generally. It was envisaged that the City would then consider the outcomes of that consultation and determine future strategy. This report provides the Council with information on the outcomes of recent consultation, undertaken using the City's *Your Say* platform, and proposes a future direction with respect to accommodating al fresco proposals within the City Centre in future, especially on Queen Street.

Some examples of different al fresco options are provided as **Attachment C**. Note that there are some that officers consider are good examples, and others that officers do not consider very successful. It also needs to be noted that the appropriateness and/or success of any option may depend upon the context.

## STATUTORY ENVIRONMENT

Key statutory environment is set out in the City's *Activities in Thoroughfares and Public Places and Trading Local Law 2015* ('Thoroughfares Local Law') and town planning scheme, as well as in the *Land Administration Act 1997*. Those documents have been considered in the preparation of this report.



## RELEVANT PLANS AND POLICIES

Relevant plans and policies include the City's *Economic Development Strategy 2016-2026* ('ED Strategy'), and *Local Planning Policy 4C: Busselton Town Centre Urban Design Provisions* (LPP4C). The ED Strategy identifies 'Place Making and Activation' as a key focus area, and sets out a number of related strategies, including 'Partner with business owners and managers to focus positive activity into streets and public spaces'. LPP4C identifies Queen Street as a 'Primary Street', and sets out that development on such streets should be 'highly activated' and that 'al fresco uses also encouraged'.

## FINANCIAL IMPLICATIONS

There are no direct financial implications of the recommendations of this report. Depending on the direction that the Council chooses to take on these issues, there may be some financial implications, such as those associated with streetscape works that may be required to allow al fresco use of space currently allocated for car parking and/or with fees required to be paid by proprietors for use of road reserve (which is City land, although a very particular kind of City land) for al fresco trading.

Note that the Council has recently amended the guidelines of the Busselton and Dunsborough centres Façade refurbishment Subsidy Programme to include infrastructure associated with al fresco areas as eligible works. Under that Programme, funding of up to \$20,000 per project is available, up to maximum of 50% of the project cost above \$5,000 (for instance, the maximum funding available for a \$10,000 project is \$2,500, and the maximum funding available for a \$35,000 project is \$15,000). \$50,000 is allocated to that project in the City's current budget, and on an ongoing, annual basis as per the Long-Term Financial Plan.

It should be noted that the City's current schedule of fees and charges does not involve an ongoing fee for al fresco trading, with such fees having been removed in the adoption of the current financial year's fees and charges. Where the City is contemplating allowing landowners or proprietors to undertake streetscape works to convert car bays and/or place structures in existing car bays, there would be a capacity to require the costs of the work to be met by the proponent and/or charge ongoing licence fees.

On the basis of recent assessments of the market value of a licence for al fresco space, a value of around \$25-\$50/m<sup>2</sup>/annum is considered an indicative range for al fresco space on Queen Street. Given a parallel parking bay is around 15m<sup>2</sup> in area, that would equate to a licence fee of \$375-\$750 per annum for an al fresco area occupying the equivalent of one car parking bay.

### Long-Term Financial Plan Implications

There are no Long-Term Financial Plan implications of the recommendations of this report.

## STRATEGIC COMMUNITY OBJECTIVES

The recommendations of this report reflect Community Objective 2.3 of the *Strategic Community Plan 2017*, which is 'Creative urban design that produces vibrant, mixed-use town centres and public spaces'.

## RISK ASSESSMENT

An assessment of the risks associated with implementation of the officer recommendation has been undertaken using the City's risk assessment framework. Risks are only identified where the residual risk, once controls are identified, is 'medium' or greater. Because the recommendation is for the adoption of a draft policy, which would then be subject of further consultation, the key risks with the draft policy are reputational. Given that the draft policy is, at least to some degree, reflective of community views, there is not considered to be a significant reputational risk.

## CONSULTATION

Using the *Your Say* platform, the City ran an online survey seeking community views and information on a range of questions related to whether the City should support more al fresco areas on Queen Street, and, in particular a final question asked participants to indicate whether having more al fresco dining options or preserving on-street car parking was more important. The survey was promoted through various social media channels (Facebook, Twitter and Instagram), the City's electronic newsletter (*Bay to Bay*), notices in the *Busselton-Dunsborough Times*, as well as coverage in local media, both newspaper and radio. Hard copy versions of the survey were also provided through the Busselton Visitor Centre, with hard copy responses being entered into the *Your Say* platform by City staff (there were a total of 12 surveys entered in this way).

A summary of the outcomes of the survey is provided as **Attachment D**. Of the 373 responses to the final question, 269 (72.1%) indicated that al fresco was more important, with 104 (27.9%) indicating that parking was more important. Of the survey respondents, 81 (21.7%) identified themselves as being a property or business owner in the City Centre. If those responses were looked at on their own, 63% indicated that al fresco was more important, and 37% that parking was more important.

Given the scale and nature of the response, it is considered that there can be a reasonable degree of confidence that a significant portion of the community think that facilitating more al fresco is more important than preserving on street parking, although in a general sense, that does not necessarily translate into support for any particular proposal. The survey, as with any survey of this kind, represents a relatively small sample of the community. The sample does, however, look to be a fairly demographically balanced and representative sample, from both an age and residential status perspective (i.e. whether they are permanent or part-time residents).

Before the Council determines its final direction on this issue, it is considered that further consultation should take place – in particular in relation to a proposed draft policy. The draft policy presented for the Council's consideration seeks to address some of the detailed questions that may arise, and the consultation process could provide for further refinement of the policy direction. It is envisaged that consultation on the draft policy would involve a further online survey, hard copy survey options, as well as targeted consultation with the Busselton Chamber and through the City's Economic Development Taskforce and related groups.

## OFFICER COMMENT

Broadly, officers are of the view that the City should be facilitating more al fresco space on Queen Street, but mainly in a reversible and in an incremental/demand-driven fashion, even though that has to be at the expense of on-street parking that some in the community value. In fact, from a broader urban design perspective, it is considered that the removal of some on-street parking and expansion of space for pedestrians may be a desirable thing in some locations, *even if the parking was not to be replaced by al fresco space*, although that is not proposed in this report. The rationale for those views is outlined and discussed below.

It is considered that a successful Busselton City Centre into the future will require an increase in the number and proportion of cafes, restaurants and/or bars. Most growing and successful centres have a significant proportion of such businesses, and most shopping centre managers and developers have been focused in recent times on attracting more of those kinds of businesses, and other businesses that provide entertainment and 'experience'. This in fact extends to the Busselton Central owners (whose expansion plans have a significant focus on café/restaurant/bar floor space, and associated al fresco areas) and the developers of the 'West Street' site (who are seeking to accommodate 'active' uses, including café/restaurant/bar offerings).

Whilst cafes, restaurants and the like and associated al fresco are not the only way to activate streets and centres, there are very few examples of centres that have become highly activated and vibrant without a significant café, restaurant and/or bar presence (noting that these are not fixed, discrete groups or classifications, but form part of a continuum) on their 'main street'. Examples of towns/centres with main streets activated in this way include Byron Bay, Noosa and, 'closer to home', even Dunsborough has a greater proportion of these kinds of businesses and associated al fresco (and there is potential to add to that, especially adjacent to Lions Park, action related to which is being progressed at present).

In terms of retail spend generally, turnover in WA has not grown consistently for a number of years, and has in fact experienced regular month on month declines over some periods, even when seasonally adjusted figures are looked at. The one area of spend that has experienced significant and fairly consistent growth is the 'cafes, restaurants and takeaway food' category. Most other parts of Australia have not experienced a 'post-mining boon slowdown' in recent years like WA has, and there has been growth in retail sales overall, but even in those states, like New South Wales, the rate of growth in the 'cafes, restaurants and takeaway food' category has been substantially greater than the overall rate of spending growth. Also of note in the Busselton context is that a significant proportion of the food and beverage spend, especially the visitor spend, takes place outside the City Centre, at wineries, breweries and/or restaurants in rural areas; whilst that is a strength of the region, it also means that the City Centre has not developed as an attractive destination for visitors to the extent that might otherwise be expected and would be desirable. There is seen to be potential to shift the balance over time more towards the City Centre. Given the above, it is seen as appropriate that the City, to the extent that it can and using the tools available to it, facilitate expansion in the number and scale of café/restaurant/bar premises on Queen Street.

An al fresco presence is often important to successful cafes, restaurants or bars in several respects. Firstly, it provides those businesses with a highly visible street presence, making people aware of the business. Secondly, it provides additional capacity for the business. Thirdly, and in many ways most importantly, in a place like Busselton, where some of the main attractions for both residents and visitors centre around the outdoor lifestyle, it provides an opportunity for people to eat, drink and socialise outdoors. The environment and ambience is often just as important as the food in determining where and whether people choose to eat, drink or socialise in a public setting.

Unfortunately, as has already been noted, due to the width and configuration of Queen Street, there is simply not enough space to have traffic lanes, sufficient footpath width/pedestrian space, on-street car parking and high usability al fresco. One-way traffic, even were it considered desirable, could not address this issue on its own; at least some on-street parking capacity would also need to be lost. Converting Queen Street to a functioning one-way street for most, or even a significant portion of its length, would also involve several million dollars' worth of streetscape works. Similarly, converting Queen Street to a pedestrian only space, even were it considered desirable, would also involve several million dollars' worth of streetscape works; and whilst it would undoubtedly provide sufficient space for al fresco and pedestrian movement, it would also involve removal of on-street parking by its very nature. It is not considered that pedestrianisation would make sense for any section of Queen Street at any time in any reasonably foreseeable future.

The experience of pedestrian malls in regional centres has more often than not been unsuccessful, with places like Townsville, which introduced malls in the 1980s or 1990s, in some cases earlier, looking to reintroduce vehicle traffic. Even in metropolitan locations, some malls have not been terribly successful. The City of Fremantle is thought to be considering the reintroduction of some traffic into the High Street Mall. The contrast between the 'Cappuccino Strip' on South Terrace, which has vehicle traffic, with the adjacent, pedestrianised, High Street Mall is instructive (although the nearby pedestrianised section of Henderson Street, adjacent to the Fremantle Markets, is rather more successful).

The reasons for the success or otherwise of a mall or of urban design generally can often be very subtle, and are not always able to be analysed in any quantitative or entirely 'objective' sense. One of the reasons that malls may not be successful, however, is the activity either side of and on the street is not actually sufficient to 'fill' the space, so the centre of the street can feel like a 'no man's land'. There can then be an attempt to 'fill the space', but this is difficult to do sensibly and consistently in many instances. The space can then either simply feel 'empty', or get 'filled' by things that are not very desirable. Malls and one way systems, whilst reducing traffic in one location, also necessarily increase traffic in other locations, unless they are in the centre of dense, largely pedestrianised precincts, that would usually also be well served by public transport.

At some point, one way traffic on a portion of Queen Street, perhaps from Prince or Kent Streets, through to perhaps Duchess or Adelaide Streets, may make sense. That is not because two-way traffic is problematic *per se*, but rather because, regardless of whether or not parking space is lost to make way for al fresco space, unless there is neither parking nor al fresco space, at a certain level of pedestrian traffic, in the context of Queen Street, and its 20 metre road reserve, the width of the footpaths on either side becomes insufficient for a high amenity pedestrian experience. If all of the on-street parking was removed from a section of street, or even from just one side of a street, it would also be possible to have a street in which the footpath is located adjacent to the roadway, and the al fresco space is located adjacent to the buildings, rather than the other way around. That kind of arrangement is also more useful for some other kinds of street activation, such as trade displays associated with shops. Whilst these are ideas that may be considered further as part of future planning, they are outside the scope of this report.

Returning to al fresco provision in Busselton in the current environment, requiring al fresco space to be provided on private land is also generally not workable in the City Centre, as there is rarely sufficient space to do so and the buildings are usually not configured for the purpose. Understandably, both landowners and tenants are often reluctant to substantially redevelop or retro-fit existing buildings to accommodate al fresco on private land. Conversion of parking bays to al fresco space, on the other hand, can conceivably and usefully be done in an incremental fashion, at relatively low cost, and can in fact be done in some ways that are relatively easily reversible.

The rationale then for the officer view that the City should be facilitating more al fresco space on Queen Street, but mainly in a reversible and in an incremental/demand-driven fashion, even though that has to be at the expense of on-street parking that some in the community value, is fundamentally as follows –

- It is generally not possible to provide additional and high usability al fresco space on Queen Street without occupying space currently used for on-street car parking bays (noting there are some issues to consider in terms of how that is done, including whether it can be done seasonally or with arrangements that vary through the day, and those issues are outlined and discussed further later in this report);
- A successful Busselton City Centre into the future will require an increase in the number and proportion of cafes, restaurants and/or bars, including and especially on the 'main street' (i.e. Queen Street);

- Providing more al fresco space will help to facilitate that increase, in fact it is highly likely to be critical to that occurring;
- Even then, that increase will only occur gradually and incrementally, and to avoid unnecessarily removing on-street car parking bays ahead of demand, it is best to also facilitate al fresco conversion of car parking bays in an incremental/demand-driven fashion; and
- Given that not all café, restaurant or bar businesses will continue indefinitely, it makes sense to consider al fresco options that are reversible and non-permanent.

Before moving on to set out what is proposed as a way forward, it is worth addressing some of the concerns and critiques that have been raised by some in the community. The following concerns/critiques have been identified –

- *Loss of on-street car parking capacity may affect viability of existing businesses.* As a proportion of the overall parking supply in the City Centre, the on-street car parking on Queen Street is a very small proportion. This is illustrated on the aerial image provided as **Attachment E**. The loss of a substantial portion of the on-street bays on Queen Street would not have a significant impact on car parking supply across the City Centre as a whole. From a business perspective, though, not all car parking will be equal, and parking immediately adjacent to the business will have more value than parking further away. It is considered by officers, though, that removing car parking in an incremental, demand-driven and reversible fashion will mean that parking supply would only be slowly reduced, with each reduction having very limited impact, but that the progressively greater activation of the City Centre will more than compensate over time (in terms of the overall trading environment). It should be noted that, if on-street parking capacity is to be reduced, it would be reasonable to ensure that ACROD bays were retained as long as possible, or even indefinitely. Parallel parking bays, such as those on Queen Street, though, are not well suited as ACROD bays, which are better accommodated as angled or perpendicular bays, such as those that exist on parts of Kent and Prince Streets especially.
- *Allowing use of al fresco space without payment is a subsidy of a particular business, arguably at the expense of other businesses.* This is correct to some extent, although it may in practice be ameliorated by broader benefits. If the aim is to encourage an activity that is seen as desirable, then, there are considered to be benefits in not requiring payment, as any payment would act as a disincentive. The provision of more al fresco is considered a form of activity that should be incentivised. There are, however, seen to be legitimate arguments against providing space without payment indefinitely. This issue is returned to later in this section of the report.
- *The City has no overall strategy for al fresco or the City Centre more generally.* Council has resolved to prepare 'Activity Centre Plans' (ACP) for both the Dunsborough Town Centre and Busselton City Centre. Earlier this year, the Council formally resolved to commence the Dunsborough project, and it is envisaged that the Busselton project would commence in the next 12-18 months, depending on workload and priorities. ACP's, though, are fundamentally statutory planning tools, not broader activation or town centre management plans. It is the observation of officers that successful town/city centre activation has often not been a result of implementation of detailed plans, but rather has been the outcome of an interplay between market forces, community and business initiative, and supportive and engaged local governments.

In fact, some overall town centre plans or similar, often look to be after the fact reconstructions of strategies that have in fact developed in fairly 'organic' fashion. Whilst there is considered to be a need for continued engagement with respect to the future of the City Centre and more planning, there is not considered to be a need to have a detailed plan before making decisions about allowing an incremental, demand-driven and reversible decision to facilitate al fresco dining.

- *The City has not set out how it will ensure businesses with al fresco areas are open in the evening or on the weekend, Sundays especially.* It is considered that the City could condition al fresco permits or similar to require that businesses are open, but the City has not done that with any of the existing business with on street al fresco, such as the *Vasse Hotel* or *More Café*. This issue is returned to later in this section of the report.

There have been some suggestions that the apparent conflict between the desire of some businesses to have al fresco areas and the desire of others to retain on-street parking could be resolved through allowing on-street parking during the day, which can then be used as al fresco space in the evening. There are also some variations on this idea, such as having car parking during the week and al fresco on the weekend. There are some places where this kind of arrangement has been successful. There may also be some circumstances in which it could work in the Busselton context. As a general principle or policy, though, it is not considered appropriate to the Busselton context. The reasons for that are set out below.

Firstly, if the café, restaurant or bar was open when the al fresco area was not in use, the chairs, tables and other things needed to set up the al fresco area would need to be stored somewhere during the day (or during the week, as relevant) in a fashion that still allowed the business to operate. In most instances, the necessary storage space will not be available. Secondly, the configuration of car parking bays on Queen Street, with a mountable kerb at the edge of the footpath, and the car parking surface consisting of asphalt, is not suited to a high amenity al fresco environment. Further, there would be safety concerns, as engineering advice indicates that, unless al fresco areas are approximately 600mm or more from the traffic lane, easily removable bollards would be required. Thirdly, whilst Busselton's climate is relatively dry and mild, having an ability to provide some weather protection will facilitate greater use of al fresco areas, and these kind of temporary arrangements are not well suited to providing weather protection, certainly not beyond that which can be provided with umbrellas or similar. Fourthly, car parking supply issues are not considered to be sufficiently great to warrant the complexity of this kind of approach. Finally, the City Centre is relatively busy and activated during the daytime in the week, and if the intention is to increase the presence of cafes, restaurants and bars, that will be helped if al fresco areas are in place, and open and operating when the City Centre is already busy.

Given the above, the following is proposed as a way forward on this issue –

- Adopt a Council policy setting out the approach (and a draft policy is provided as **Attachment F**);
- That policy would support removal of car parking to accommodate more al fresco space on Queen Street, but mainly in a reversible and in an incremental/demand-driven fashion;
- That would occur 'out the front' of the premises, or as close as possible to the premises, other than where there are banks or similar premises with very little street engagement or activation, where it could occur in those locations too, associated with businesses nearby but not adjacent to the location;
- The preferred form of al fresco would either be decking placed over car bays or a custom designed and built 'drop-in' structure (with bollards installed separating the al fresco area from the traffic lane), but not in the form of converted containers, with the design compromise that entails;

- The costs of providing such space be met by the proponent (proprietor and/or landowner), although as per currently, proposals can be subject of applications for funding under the City's façade upgrade subsidy programme;
- The land be provided at no cost for up to two years (i.e. sufficient time to assess the success or otherwise of the initiative, by both the proponent and the City), but that a licence fee apply thereafter, and subject to conditions requiring minimum trading periods, which are to include two or more of Saturdays 3pm-6pm, Sundays 9am-2pm, or three weeknights until 8.30pm, for a minimum of six months of the year (and that existing al fresco permits be transitioned to these arrangements); and
- The proponent shall be responsible for removal and decommissioning of al fresco infrastructure that is no longer required or supported; and
- The above should be reflected as necessary in a two to five year term (reflective of the level of up-front investment) licence agreement between the City and the proponent.

It is envisaged that the Policy, if adopted, would be subject of review as part of the preparation of the Busselton City Centre Activity Centre Plan, and that provision of similar guidance for other parts of the City Centre would also be considered at that time. It is also envisaged the policy may in future be integrated with broader policy related to management of City property, especially management of commercial activity on City property.

## **CONCLUSION**

It is seen as important that the Council establish its direction on this issue, such that landowners, proprietors and officers can develop and consider proposals with some confidence. For the reasons set out in the report, it is considered that the Council should adopt a policy to support more al fresco space on Queen Street especially, but mainly in a reversible and in an incremental/demand-driven fashion. Further consultation is, though, seen as appropriate before the final direction is determined.

## **OPTIONS**

The options available to the Council are fundamentally as follows –

- Not adopt a policy, and assess al fresco proposals on a case-by-case basis; or
- Adopt the draft policy without prior consultation; and/or
- Adopt the draft policy, subject to modifications.

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

Should the Council support the officer recommendation, it is expected that consultation would commence within one month, run for approximately one month, with a further report to the Council (via the Policy & Legislation Committee), 4-6 weeks later.

2.26pm At this time the Acting Director of Community and Commercial Services entered the meeting.

**COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION**

**PL1806/194** Moved Councillor R Paine, seconded Councillor L Miles

That the Council adopt the attached draft Policy for consultation purposes (Attachment F to the agenda report – *Al Fresco Dining in the Busselton City Centre*).


**CARRIED 5/0**

2.41pm At this time the Director of Planning and Development Services and the Manager Environmental Services left the meeting.

2.41pm At this time the Director of Finance and Corporate Services left the meeting.



6.2 RESCISSION OF COUNCIL POLICY 077 INTERNET USE WITHIN THE BUSSELTON AND DUNSBOROUGH PUBLIC LIBRARIES

<b>SUBJECT INDEX:</b>	Council Policies
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Community Services
<b>ACTIVITY UNIT:</b>	Library Services
<b>REPORTING OFFICER:</b>	Manager, Community Services - Maxine Palmer
<b>AUTHORISING OFFICER:</b>	Director, Community and Commercial Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Council Policy 077 Internet use within the Busselton and Dunsborough Public Libraries 

2.43pm At this time the Director of Finance and Corporate Services returned to the meeting.

### PRÉCIS

The purpose of this report is to recommend rescission of Council Policy 077 - Internet use within the Busselton and Dunsborough Public Libraries (the Policy) (Attachment A). The Policy outlines Council's position with respect to the provision of free computer / internet access to all members of the Busselton and / or Dunsborough Library and details a range of operational user guidelines for such use.

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the Governance Systems Review (GSR). Included in the scope of the review was the City's policy and procedure framework with recommendations made in relation to the nature and intent of Council policies, namely that Council policies should deal with higher level strategies and objectives.

In accordance with the recommendations of the GSR, it is recommended that the Policy be rescinded.

### BACKGROUND

The Policy was originally created in 1997 and was last reviewed in July 2016. It is assumed that the Policy, given its original creation date, was developed at a time when the provision of public access to technology within public places such as libraries was very new. It is also likely that Council policy documents were also more operational in their focus than is expected currently.

The GSR was undertaken over a 3 month period by Mr John Woodhouse LLB B.Juris and made the following recommendations with respect to the City's policy and procedure framework:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
  - a. *Should deal with higher level objectives and strategies;*
  - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
  - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*

3. *Consideration should be given to developing a new Council Policy which sets out the 'framework' for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

In response a Policy Framework has been developed and endorsed by Council, setting out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures.

In accordance with the recommendations of the GSR, this report recommends that the Policy be rescinded.

## **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.

## **RELEVANT PLANS AND POLICIES**

There are no plans or other policies directly relevant.

## **FINANCIAL IMPLICATIONS**

The recommendation to rescind the policy has no financial implications.

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

The recommendation to rescind the policy has no long term financial plan implications.

## **STRATEGIC COMMUNITY OBJECTIVES**

The Officers Recommendation will not impact adversely on the achievement of any of the community objectives contained within the Strategic Community Plan 2017 and will instead serve to meet the objectives of Key Goal Area 6, specifically community objective 6.1 - Governance systems, processes and practices are responsible, ethical and transparent, by streamlining the City's governance approach with respect to strategic planning.

## **RISK ASSESSMENT**

The City's libraries have been providing public access to computers and the internet for many years and have well established operational processes that govern that access. Therefore there are no identified risks of a medium or greater level associated with the Officers Recommendation

## **CONSULTATION**

No consultation was considered necessary in relation to this matter.

**OFFICER COMMENT**

The Policy scope states that Busselton and Dunsborough public libraries provide free internet access to all library members. The content then details the rules or conditions applicable to that use, including for instance:

- that printing from the internet is available and is charged in accordance with Council's Schedule of Fees and Charges;
- that latecomers will forfeit the unused portion of reserved time, or if they are more than fifteen minutes late will forfeit the entire booking;
- that users must read and agree to the "Conditions of Public Access – Internet Use";
- that a maximum of two public users per internet computer is allowed at any one time

As can be seen from above and from review of the attached Policy the matters it deals with are very operational and are more appropriate as a set of usage terms provided to users at the time they make a booking / use a computer.

While the Policy was probably necessary at the time it was adopted, the City's libraries have been providing public access to computers and the internet for many years and have well established processes in relation to how that access is provided and controlled. Hence the Policy is not considered necessary, or, in light of the recommendations of the GSR and the newly adopted Policy Framework, appropriate.

In the event that Council does want to retain a policy outlining their commitment to the provision of free internet access in public facilities (including the City's libraries) then the Policy could be revised to provide a simple statement to that effect.

**CONCLUSION**

It is recommended that the Policy be rescinded, as it is of an operational nature and is sufficiently covered by current operational practices and procedures.

**OPTIONS**

Council could instead require that the Policy is reviewed and updated to reflect a more strategic statement with respect to their commitment to the provision of free computer / internet access within public places, including the City's libraries.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The Policy will be rescinded immediately upon adoption of the Officers Recommendation.

**COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION**










**PL1806/195** Moved Councillor C Tarbotton, seconded Councillor R Paine

That the Council rescinds Council Policy 077 – Internet use within the Busselton and Dunsborough Public Libraries.

**CARRIED 5/0**

2.49pm At this time the Acting Director of Community and Commercial Services left the meeting.

### 6.3 REVIEW OF PURCHASING RELATED POLICIES AND DELEGATIONS

<b>SUBJECT INDEX:</b>	Procurement
<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 and Property Services
<b>REPORTING OFFICER:</b>	Manager Governance and Corporate Services - Sarah Pierson Manager Legal and Property Services - Martyn Cavanagh
<b>AUTHORISING OFFICER:</b>	Director Finance and Corporate Services - Tony Nottle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Current Purchasing Policy 
	Attachment B Current Regional Price Preference Policy 
	Attachment C Current Tender Selection Criteria Policy 
	Attachment D Current Tender Pre Selection Criteria Policy 
	Attachment E Current Delegation LG3J 
	Attachment F Current Delegation LG3K 
	Attachment G Current Delegation LG3M 
	Attachment H Proposed Purchasing Policy 
	Attachment I Proposed Regional Price Preference Policy 
	Attachment J Proposed SMP - Procurement Selection Criteria 
	Attachment K Proposed Instrument of Delegation LG3K 
	Attachment L LG3J Track Changes 
	Attachment M Proposed Instrument of Delegation LG3J 
	Attachment N LG3K Tracked Changes 

## PRÉCIS

In August 2017 the CEO commissioned a high level independent review of the City's governance systems and processes – the Governance Systems Review (GSR). The review was undertaken by Mr John Woodhouse and was completed on 30 October 2017. The review considered the City's policy and procedure framework generally. The review also considered certain specific policy matters, including the City's policy approach to procurement and tenders.

The City has acknowledged the recommendations in the GSR and given consideration to the City's current policies, processes and delegations in relation to procurement and tenders.

The purpose of this report is to advise Council of the outcomes of the City's considerations, and to make recommendations to Council about the City's procurement policies and delegations.

## BACKGROUND

### The GSR recommendations as to policy framework (generally)

In relation to Council policies more broadly, the GSR made the following recommendations:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
  - a. *Should deal with higher level objectives and strategies;*
  - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
  - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*

3. *Consideration should be given to developing a new Council Policy which sets out the 'framework' for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

In response a Policy Framework has been developed and endorsed by Council, along with a new (adopted) Council Policy template. A new approach and template has also been put in place for the development of Staff Management Practices (SMP) (previously referred to as Operational Practices and Procedures).

### **GSR Recommendations as to procurement policy**

In relation to procurement and tenders, the GSR made the following recommendations:

1. *One single procurement/purchasing policy should be developed by the CEO for adoption by the Council.*
2. *"The new council policy should:*
  - a. *replace 3 of the existing council policies referred to above;*
  - b. *focus on the strategic approach to procurement and the overall goals to be achieved; and*
  - c. *not descend into unnecessary detail.*
3. *The new council procurement policy should be consistent with contemporary policies adopted by the major metropolitan local governments.*
4. *The CEO should develop and put in place an internal policy or OPP which covers all matters of detailed implementation including:*
  - a. *selection criteria and how criteria are to be used according to the nature of the tender;*
  - b. *how and by whom (e.g. a panel) the evaluation is to be prepared.*
5. *The new internal policy or OPP should be consistent with similar, contemporary policies or practices in the major metropolitan local governments.*
6. *The existing Regional Price Preference Policy – Policy 049 should be revised with a view to it being simpler and clearer for both prospective tenderers and City employees to understand. There is no need to change the underlying intent that the maximum percentages are to be allowed where a regional location or regional content is established.*
7. *I recommend that consideration be given to the delegation to the CEO of the authority to make the purchasing policy (required by Regulation 11A).*
8. *The new purchasing policy should, of course, be reported to the Council and be made available on the City's website.*

### **GSR findings as to supporting local business**

The GSR further considered under the heading "Supporting local business" the 'perceived need by some that there should be greater emphasis put on local content'. While the GSR made no recommendations in relation to this, Mr Woodhouse made the following comments:

- *"In this regard I found that the Policies and OPPs of the City of Busselton are generally consistent with those of most other local governments in regional Western Australia"*
- *"In this respect I did not find that the City was out of kilter with contemporary practice".*
- *"... if a decision is taken that the matter is worthy of consideration, then, in my view, a thorough review should first be done and that any review should not start from the premise that a change to existing policies is needed or that the existing policies lead to an undesirable outcome"*

The following were provided by Mr Woodhouse as suggested considerations for any review:

- *“Is the current approach “broken” or in need of improvement or does it serve the community well?”*
- *What do the figures show is the result of the current approach?*
- *How does that approach compare with comparable local governments (if comparisons can sensibly be made)?*
- *What if any quantifiable impact might a proposed change make?*
- *If other local governments in the region were to do likewise then what impact might that have?*
- *Putting aside any possible change to the existing policies, what other measures might be introduced or strengthened by the City to address the root causes of the issue or the perceived issue?*
- *Are there recurring reasons why some tenders from “local” suppliers (and perhaps others) are reducing their chances of being recommended?*
- *If so, can the City assist in educating or informing those suppliers of the reasons and how they might be addressed?*
- *If one were to focus on that portion of the procured works and services which are not awarded to local businesses, what are the reasons for that being the case and are those reasons good reasons?*
- *If one of the reasons that a local supplier cannot submit a tender is that the supplier does not have the ability to provide all components of the required works or services, then is there scope for the City to divide one tender into a number of tenders for differing components?”*

### **The City’s Current Procurement Framework**

The City’s current procurement policy framework is comprised of the four (4) separate Council policies and three (3) delegations of powers and duties. These are:

1. Purchasing Policy (Policy 239) – adopted 9 March 2016 (**Attachment A**)
2. Regional Price Preference Policy (Policy 049) – adopted 8 November 2017 (**Attachment B**)
3. Tender Selection Criteria Policy (Policy 031) – adopted 11 March 2011 (**Attachment C**)
4. Tender Pre Selection Criteria Policy (Policy 247) – adopted 8 June 2016 (**Attachment D**)
5. Delegation instrument LG3J (relating to tenders and associated contracts) (**Attachment E**)
6. Delegation instrument LG3K (preliminary selection of tenderers) (**Attachment F**).
7. Delegation instrument LG3M (establishing panels of pre-qualified suppliers) (**Attachment G**)

The delegation instrument LG3C is subject to certain conditions, one of which is that the standard selection criteria under Policy 031 is used, and further that the (Purchasing) Policy 239 is complied with.

### **STATUTORY ENVIRONMENT**

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

Regulation 11A(1) of the Regulations requires a local government to implement a purchasing policy in relation to contracts for supply of goods or services where the consideration under the contract is, or is expected to be, \$150,000 or less. Such a policy must, among other things, make provision in respect of:

- the form of quotations acceptable;
- the minimum number of oral and written quotations that must be obtained; and
- the recording and retention of purchasing records.

Under Regulation 24AC(1)(a) a local government may adopt and implement a policy for panels of pre-qualified suppliers. The City's Purchasing Policy (current and revised) includes provisions to meet all of the requirements for a policy on establishing panels of pre-qualified suppliers.

Section 3.57 of the Act requires a local government to invite tenders before it enters into a contract of a prescribed kind under which another person is to supply goods or services. Regulations 11 through 21(A) of the Regulations deal with matters relating to tenders, including when tenders have to be publicly invited, requirements for publicly inviting tenders (essentially determining of criteria for deciding which tender should be accepted), and rejecting and accepting tenders.

Part 4A of the Regulations enables a local government to give a regional price preference in connection with assessing tenders, where it has a regional price preference policy made in accordance with the Regulations.

### **RELEVANT PLANS AND POLICIES**

Outside of the policies which are the subject of this report, there are no other applicable policies or plans.

### **FINANCIAL IMPLICATIONS**

Adoption of the officer's recommendation will not have any financial implications.

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

Adoption of the officer's recommendation will not have any long term financial implications.

### **STRATEGIC COMMUNITY OBJECTIVES**

Adoption of the officer's recommendation aligns to the following Key Goal Areas of the City of Busselton Strategic Community Plan 2017:

#### ***Key Goal Area 6 –Leadership***

6.1: Governance systems, process and practices are responsible, ethical and transparent.

#### ***Key Goal Area 4 – Economy***

4.2: A community where local business is supported and in turn drives our economy

### **RISK ASSESSMENT**

There are no risks associated with the Officer Recommendation identified as being of a medium or greater level.

### **CONSULTATION**

In reviewing the procurement policy framework, and specifically in considering aspects related to the establishment of panels of pre-qualified suppliers, officers have consulted with the Western Australian Local Government Association (WALGA) and the Department of Local Government, Sport and Cultural Industries (DLG). The revised Purchasing Policy reflects the advice received from both with respect to the operation of such panels.

Officers have also consulted with the Shire of Augusta-Margaret River with respect to the Regional Price Preference (RPP) Policy, with the aim of exploring a reciprocal price preference arrangement where each local government would provide a preference to suppliers located within the other's district. Correspondence received from the Shire of Augusta –Margaret River indicates that a reciprocal arrangement is not supported. As such, the policy has been drafted only preferencing businesses located within the City of Busselton District.

The Busselton Chamber of Commerce and Industry (BCCI) have been provided with copies of the proposed new policies and practices along with an overview of the rationale in relation to amendments to the RPP Policy, the inclusion of a local benefit criterion for assessment of tenders and quotations (where a formal assessment is required), and the recommendation to rescind the Tender Selection Criteria Policy and the Tender Pre Selection Criteria Policy in favour of a SMP setting out selection criteria.

#### **OFFICER COMMENT**

Following the release of the GSR findings, a review of the City's procurement policy framework was undertaken by City officers, with a small project team formed comprising of officers from legal and property services, governance services and operations services.

This report makes a number of recommendations in relation to the procurement policy framework, with each recommendation addressed below under a relevant heading.

#### Adoption of a revised Purchasing Policy (Attachment H)

The City's Purchasing Policy provides the framework for purchasing decisions made by the City. In particular it details the procedures that must be followed for purchasing in accordance with the estimated value of the transactions. While officers feel it is necessary to provide some broad detail around how purchasing decisions are to be carried out (both for the purposes of setting high level direction for City staff and for informing suppliers), the current policy is considered to be too detailed.

As per the recommendations of the GSR, the policy has therefore been reviewed to focus more on the strategic approach to procurement and the overall goals to be achieved. Operational and administrative aspects have been removed. These include matters such as how to obtain a verbal quotation, re-statements of the Act and Regulations, and procedures for opening tenders. If considered appropriate by the CEO, these types of matters may be incorporated into a SMP or other operational procedure. The revised policy that has been developed is similar in nature and focus to other local government policies that were reviewed, with officers noting that like Councils including Albany, Bunbury, Fremantle, Geraldton, Joondalup and Rockingham, all have a similar policy relating to purchasing.

It is not considered that the Council should delegate to the CEO the power to make the purchasing policy required by Regulation 11A. It is considered that Council should provide the broad strategic direction of a policy that deals with purchases under \$150,000, tenders and panels of pre-qualified supplies. The following GSR recommendations have not therefore been implemented and it is proposed that a Council policy be retained (noting that in effect this will satisfy recommendation 8).

7. *I recommend that consideration be given to the delegation to the CEO of the authority to make the purchasing policy (required by Regulation 11A).*
8. *The new purchasing policy should, of course, be reported to the Council and be made available on the City's website.*



### Adoption for advertising of a revised Regional Price Preference Policy (Attachment I)

While the City's current RPP Policy was only adopted in November 2017, it was included in this review given the GSR recommendation:

1. *The existing Regional Price Preference Policy – Policy 049 should be revised with a view to it being simpler and clearer for both prospective tenderers and City employees to understand. There is no need to change the underlying intent that the maximum percentages are to be allowed where a regional location or regional content is established*

It was also considered prudent to explore the possibility of a reciprocal price preference arrangement as discussed earlier in this report as well as consideration of a local content / benefit selection criteria.

The proposed revised policy provides the same price preference percentages as the existing policy however officers have sought to simplify and, in contrast to the changes made in November 2017, refine the policy with respect to its application.

Under the Regulations a policy may provide for a price preference for a tenderer that has been operating a business continuously out of a premises within the region (as defined in the policy) for at least six months, or if they are from outside of the region but supply goods or services from within the region. The current policy allows for a price preference to be provided in both situations.

While aligning to the Regulations, in practice this can result in a price preference being applied to non-local suppliers who have for example indicated they will use local sub-contractors. Calculating the value of the sub contracted works in such a scenario can be difficult, and overall there is some confusion amongst both staff and suppliers with regards to applying the policy.

It is therefore proposed that the revised policy apply only to a Local Supplier defined as a supplier who has had for more than 6 months prior to the closing date of the tender a physical presence by way of a shop, depot, outlet, headquarters or other premises from which they operate within the City of Busselton district). This will narrow the application of the policy and will reduce the opportunity for those located outside of the district but who source local goods or services to be provided a preference. It is recommended however that a local benefit selection criteria be introduced, as discussed under the next heading, with this continuing to provide some benefit to suppliers who operate from outside the district but who source local goods and services.

The GSR recommended that

1. *One single procurement/purchasing policy should be developed by the CEO for adoption by the Council.*
2. *"The new council policy should:*
  - a. *replace 3 of the existing council policies referred to above; .....*

Officers are of the view that the RPP Policy should remain a separate policy as there is a statutory requirement to advertise the RPP Policy that does not exist for the broader Purchasing Policy. Additionally the Purchasing Policy, while simplified, already addresses a number of matters and adding more content and complexity to it is not considered to be the best approach.

Rescission of the Tender Selection Criteria Policy and Tender Pre Selection Criteria Policy in favour of a new SMP: Purchasing – Procurement Selection Criteria.

The City's current Tender Selection Criteria Policy sets out four qualitative criteria which are to be used in the assessment of all tenders. The policy sets parameters for the weighting of each criterion (0% to 20%) and also sets parameters for the weighting of price in conjunction with the qualitative criteria (20% to 80%). Delegation LG3J sets out that use of the standard selection criteria as outlined in this policy is as a condition to the delegated power of determining the written criteria for deciding which tender should be accepted; requiring the CEO to seek a formal Council decision if he wishes to use an alternative criterion or set of criterion for a particular tender.

Similarly the Tender Pre Selection Criteria Policy sets out a similar set of qualitative criteria in relation to pre tender Expressions of Interest (EOI) processes and it is a condition of Delegation LG3K that this policy is complied with in such processes.

To date there have been no operational practices underpinning the application of these policies, with the policies drafted almost as instructions to officers. While not specifically intended to be used for the formal assessment of quotations (below tender level), in the absence of any other operational practice, the same criteria have generally also been applied for this purpose.

In addition to recommendation 1 noted above, the GSR recommended that

8. *The CEO should develop and put in place an internal policy or OPP which covers all matters of detailed implementation including:*
  - a. *selection criteria and how criteria are to be used according to the nature of the tender;*
  - b. *how and by whom (e.g. a panel) the evaluation is to be prepared.*

A new SMP has been prepared, Purchasing – Procurement Selection Criteria (PSC SMP) (**Attachment J**), setting out a range of selection criteria and how they are to be applied in the assessment of tenders, EOIs, invitations to join a panel of pre-qualified suppliers, and request for quotations. It is recommended that the Tender Selection Criteria Policy and the Tender Pre Selection Criteria Policy be rescinded and that Council notes the new PSC SMP as the mechanism by which selection criteria are applied. It is also therefore recommended that amendments are made to the current delegation containing conditions relating to the current policies. This is discussed further below.

While still imposing some clear parameters and processes for officers to follow, the PSC SMP provides flexibility by giving officers a broader range of criteria to select from. Additionally, in the event that a criterion not included under the practice was considered appropriate to a particular tender the CEO could make a determination to include it. The PSC SMP also sets out a slightly more moderate range for price being 30% to 70%. Again however if the CEO deemed it appropriate this could be adjusted for particular or unusual circumstances.

In order to provide appropriate levels of support for local business and enhance the local benefits generated through procurement, a local benefit criterion is proposed as a fixed selection criterion, weighted of 5%. The criterion proposed is:

Local Benefit

The respondent is to describe how they will contribute to the local community (social, economic, environmental, or other) over and above being a local supplier operating within the district.

Respondents would be required to demonstrate through their tender submission the level of community benefit they or their proposal generates.

This is intended to be benefit beyond just being a Local Supplier as per the RPP policy. Benefits such as employing or contracting locally, contributing to the community through engagement in sporting or cultural groups, or contributing to vocational and education advancement (work experience programs, scholarships or awards) would be considered under this criterion. Officers would then score each submission using the scoring guide set out in the SMP. Until now, while a common scoring guide has been used, it has not been formalised in any standard practice documentation, and of course it has not contained factors relevant to a local benefit criterion.

While inclusion of a local benefit criterion is recommended in order to enhance the ability for procurement decisions to positively impact on the community, officers do not feel it should play a significant role in the assessment of whether a respondent can fulfil the requirements of an unduly significant specification / contract. Hence it is proposed that the criterion be weighted at 5%, noting that the benefits provided under the RPP Policy apply independently. Procurement decisions should be guided by the principle of 'best value for money' and achieving the most advantageous outcome to the City (and its ratepayers). It is considered that selection criteria related directly to the respondents' ability to carry out the required works or deliver the required services will be the dominant considerations in achieving this principle.

More broadly with respect to supporting local business, the City is also pursuing other initiatives. In March a new procurement tool called VendorPanel Marketplace was launched. While still in its infancy, it is intended that this tool will improve the City's ability to engage with and support local suppliers. Some additional promotion and education is required in order to ensure suppliers are registered within the Marketplace, however once they are, City staff will be more readily able to locate them and engage by way of quotations. The opportunity exists for local business to actively engage in this initiative.

In the past six to eight months the City has also presented at information sessions and forums about its procurement processes including Procure South West in Bunbury and a Meet the Buyer session arranged by the BCCI and held here at the City's offices. As detailed in those sessions, in the 2016/17 year 63% of the City's total spend (excluding nett pays to employees, transactions related to utility providers, inter-government agency and other similar payments, and term bank deposits) was in the South West Region, with 54% of that in the Busselton district. While we are keen and working hard to see this increased, it represents a good base to build on.

#### Amendments to Delegation instruments LG3J and LG3K

Finally, in line with the recommendation to rescind the two selection criteria policies, it is proposed that amendments are made to Delegation instruments LG3J and LG3k to remove the conditions which reference the policies.

In relation to Delegation instrument LG3J it is also recommended that the delegation of powers and duties more comprehensively and explicitly identify the scope of the delegation. The instrument is to be amended to refer to the CEO's powers to purchase goods and services under the exceptions to the tender requirements. The revised delegation is presented as **Attachment K**, with the track changes version provided as **Attachment L**.

In relation to Delegation instrument LG3K it is recommended, subject to Council rescinding the Pre-Tender Selection Criteria Policy, that the instrument be correspondingly amended. The revised delegation is presented as **Attachment M**, with the track changes version provided as **Attachment N**.

## **CONCLUSION**

A review of the City's procurement policy framework has identified a number of improvements which will assist the City in obtaining the most advantageous outcome with respect to its procurement while also supporting local business to in turn drive the local economy. The proposed amendments to the policies and procedures aim to support this, while also implementing a better balance between Council's strategic function and the CEO's administrative functions. The improvements are also aimed at ensuring the City's procurement policies and processes are in line with the City's new Policy Framework, and meeting a number of the recommendations of the GSR.

## **OPTIONS**

The Council may choose not to adopt the officer's recommendation and instead may seek to do one or more of the following:

1. Request further or different amendments be made to the Purchasing Policy;
2. Retain the RPP Policy in its current form;
3. Request that the Tender Selection Criteria Policy and Tender Pre Selection Criteria Policy be retained and / or amended to reflect the content of the proposed SMP or amended in other ways;
4. Request that the Delegation condition with respect to the Tender Selection Criteria Policy and Tender Pre Selection Criteria Policy be retained.

It is noted that the above options would not accord with the recommendations of the GSR.

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

The Purchasing Policy will come into force immediately upon Council's endorsement of the officer recommendation, with the PSC SMP coming into force within a week.

The Tender Selection Criteria Policy and the Tender Pre Selection Criteria Policy will also be immediately rescinded and the Delegations updated.

The RPP Policy will be advertised for public submissions within a week upon adoption of the proposed policy (for advertising purposes) and if submissions are received the subject will need to be further considered by Council.

**COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION****PL1806/196** Moved Councillor R Paine, seconded Councillor C Tarbotton

That the Council after taking into consideration the Governance Systems Review

1. Adopts the proposed Purchasing Policy as per Attachment H, replacing the current Purchasing Policy (shown as Attachment A).
2. Adopts the proposed Regional Price Preference Policy as shown in Attachment I for the purpose of giving notice to the public in accordance with section 24E of the Local Government (Functions and General Regulations) 1996; and
3. If there are no submissions received after the expiration of the public notice period referred to in 2 above, adopts the Regional Price Preference Policy as per Attachment I, replacing the current Regional Price Preference Policy (shown as Attachment B).
4. Rescinds the Tender Selection Criteria Policy shown as Attachment C.
5. Rescinds the Tender Pre Selection Criteria Policy shown as Attachment D.
6. Notes the content of the Staff Management Practice: Purchasing – Procurement Selection Criteria as per Attachment J.

**ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

7. Adopts the amended Delegation LG3J as per Attachment K, replacing the current delegation (shown as Attachment E).
8. Adopts the amended Delegation LG3K as per Attachment M, replacing the current delegation (shown as Attachment F).

**CARRIED 5/0**

**7. GENERAL DISCUSSION ITEMS**

Nil

**8. NEXT MEETING DATE**

Tuesday, 24 July 2018

**9. CLOSURE**

The meeting closed at 3.29pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 30 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON TUESDAY, 24 JULY 2018.

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

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