

Please note: These minutes are yet to be confirmed as a true record of proceedings

CITY OF BUSSELTON

MINUTES FOR THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 21 JUNE 2016

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MINUTES

MINUTES OF A MEETING OF THE POLICY AND LEGISLATION COMMITTEE HELD IN MEETING ROOM A, CITY ADMINISTRATION SITE, HARRIS ROAD, BUSSELTON, ON 21 JUNE 2016 AT 11.00AM.

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 11.04am.

2. ATTENDANCE

Presiding Member:

Cr Coralie Tarbotton

Members:

Cr Rob Bennett
Cr Grant Henley
Cr Robert Reekie

Officers:

Mr Matthew Smith, Director, Finance and Corporate Services
Mrs Maxine Palmer, Manager, Community Services (until 11.15am)
Mrs Sharon Woodford-Jones, Property Management Coordinator (from 11.19am)
Miss Hayley Barge, Administration Officer, Governance

Apologies

Cr Ross Paine
Mr Cobus Botha, Legal Services Coordinator

Approved Leave of Absence

Nil

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 26 May 2016

Committee Decision

PL1606/073 Moved Councillor R Bennett, seconded Councillor R Reekie

That the Minutes of the Policy and Legislation Committee Meeting held 26 May 2016 be confirmed as a true and correct record.

CARRIED 4/0

6. REPORTS

6.1 USE OF INTERNET POLICY - YOUTH POLICY

SUBJECT INDEX:	Use of Internet - Libraries / Youth Policy
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Community Services
ACTIVITY UNIT:	Busselton and Dunsborough Libraries
REPORTING OFFICER:	Manager, Community Services - Maxine Palmer
AUTHORISING OFFICER:	Director, Community and Commercial Services - Naomi Searle
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Youth Policy Attachment B Use of Internet Policy

PRÉCIS

As part of the Council's ongoing policy review, two policies relating to the delivery of youth services and public internet use at the Busselton and Dunsborough Libraries are presented to Council for review and updating.

BACKGROUND

Internet Use within the Busselton and Dunsborough Public Libraries Policy

On 27 April 2016, Council adopted the 2016/17 Schedule of Fees and Charges for advertising, effective from 1 July 2016. These fees include a new \$2.00 charge for non-library members to use the public internet computers within Busselton and Dunsborough libraries. This fee was included to encourage travelers and tourists to use their own devices instead of the public PCs which are in high demand for study and other essential services by local residents. This report contains the corresponding amendment to the Policy: *Internet Use within the Busselton and Dunsborough Public Libraries Policy*.

Youth Policy

In 2015 Council endorsed the City of Busselton Social Plan (2015-2025) as a guide for future planning. The Social Plan considers ten (10) sectors of the community, one being Youth Services. This report proposes the key issues, goals and outcomes outlined in the Youth Services section of the Social Plan now supersede the issues and role of the City as outlined in the Youth Policy – 067.

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 has proposed to do this on a recommendation of a Committee it has established in accordance with Section 5.8 of the Act.

RELEVANT PLANS AND POLICIES

This report relates to the City of Busselton Social Plan (2015–2025) and the following policies:

- Youth Policy – 067
- Internet Use within the Busselton and Dunsborough Public Libraries Policy - 077

FINANCIAL IMPLICATIONS

As part of the 2014/15 adopted Fees and Charges Schedule, the City imposes a \$2.00 fee for non-library members to use the public internet computers. This has been considered in the development of the Library Services 2016/17 draft budget.

Long-term Financial Plan Implications

Nil.

STRATEGIC COMMUNITY OBJECTIVES

This proposal aligns with the City of Busselton Strategic Community Plan 2013 (revised 2015) Key Goal Area 1 of a Caring and inclusive community

RISK ASSESSMENT

An assessment of the potential implication of implementing the officer recommendation has been undertaken using the City's risk assessment framework. No risks of medium rating or above were identified for the Policy changes detailed in this report.

CONSULTATION

Public notice has been given for the implementation of the Council's Schedule of Adopted Fees and Charges 2016/17.

Significant consultation was conducted to develop all aspects of the City of Busselton Social Plan 2012-2020 when it was first adopted by Council in 2012 with further consultation conducted during 2015 when it was reviewed to become the City of Busselton Social Plan (2015-2025). In particular for the Youth Services Sector, Officers consulted the City's Youth Advisory Council and relevant government departments, agencies and groups who work with young people in our local community.

OFFICER COMMENT

Internet Use within the Busselton and Dunsborough Public Libraries Policy

The new \$2.00 charge for non-library members to use the public internet computers within Busselton and Dunsborough libraries has already been adopted by Council in the 2016/17 Schedule of Fees and Charges. This fee was included to encourage travelers and tourists to use their own devices instead of the public PCs which are in high demand for study and other essential services by local residents. This report updates point 1. in the corresponding Policy: *Internet Use within the Busselton and Dunsborough Public Libraries* to incorporate a requirement for non-library members to purchase a 'Guest Pass.'

Youth Policy

The current Youth Policy outlines issues associated with youth affairs, and broadly how the City will determine its role and/or involvement in issues affecting young people. The Council endorsed City of Busselton Social Plan (2015-2025) identifies current key issues and a series of actions for the City's Youth Sector. For each action a lead agency is identified and who the lead agency will partner with to achieve each action. The role of City is therefore clearer in the Social Plan as opposed to the current Youth Policy, with the issues outlined the Youth Policy also being outdated. The Youth Policy could be updated to reflect the key issues in the Social Plan, however this is deemed unnecessary. Officer's therefore recommend the Youth Policy is revoked on the basis that the City of Busselton Social Plan (2015-2025) now supersedes it.

CONCLUSION

Officers recommend that the Council adopts the amended Policy 077 - *'Internet Use Within The Busselton and Dunsborough Public Libraries'* and revokes the current Policy 067 – *'Youth.'*

OPTIONS

Council may determine one or more of the following:

1. Not to amend Policy 077- *'Internet Use Within The Busselton and Dunsborough Public Libraries'* on the basis that the \$2.00 fee for non-library members to use the public computers be reviewed, and/or
2. Policy 067 - *'Youth'* be updated to reflect the City of Busselton Social Plan (2015-2025).

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Should the Officer Recommendation be endorsed the relevant changes will be made to the associated Policies immediately.

Committee Recommendation and Officer Recommendation

PL1606/074 Moved Councillor R Bennett, seconded Councillor C Tarbotton

That the Council:

- 1) Adopts amended Policy 077 – *'Internet Use Within The Busselton and Dunsborough Public Libraries'* as attached;
- 2) Revokes Policy – 067 *'Youth'* on the basis that it has been superseded by the City of Busselton Social Plan (2015-2025);

CARRIED 4/0

11.15am At this time the Manager Community Services left the meeting and did not return.

6.2 PROPOSED CITY OF BUSSELTON CEMETERIES AMENDMENT LOCAL LAW 2016

SUBJECT INDEX:	Local Laws
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Legal Services
REPORTING OFFICER:	Legal Services Coordinator - Cobus Botha
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Absolute Majority
ATTACHMENTS:	Attachment A Proposed Cemeteries Amendment Local Law 2016

PRÉCIS

Following gazettal of the *City of Busselton Cemeteries Local Law 2015 (Cemeteries Local Law)* the Joint Standing Committee on Delegated Legislation (**JSC**) notified the City that a penalty imposed under clause 9.1 of the Cemeteries Local Law is inconsistent with the *Cemeteries Act 1986 (Cemeteries Act)* and consequently required amendment of the local law to resolve the issue. Council subsequently resolved to authorise the preparation and advertising of the proposed *City of Busselton Cemeteries Amendment Local Law 2016 (Amendment Local Law)*. The purpose of this report is for Council to consider submissions received in relation to the proposed Amendment Local Law and to consider whether to make the proposed Amendment Local Law pursuant to section 3.12 of the *Local Government Act 1995 (Act)*.

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

BACKGROUND

On 11 November 2015 Council resolved to make the Cemeteries Local Law which was subsequently gazetted on 10 December 2015 and came into operation 14 days after its publication in the *Government Gazette*.

The JSC, which is a committee of state politicians from both houses of the Western Australian Parliament, has delegation from Parliament to scrutinize and recommend the disallowance of local laws to the Parliament of Western Australia. Under the above mentioned delegation, the JSC reviewed the Cemeteries Local Law following gazettal thereof and advised the City that, although section 55(1)(p) of the Cemeteries Act limits the further fine for a continued contravention of a local law to \$20 for every day or part of a day during which the offence has continued, clause 9.1 of the Cemeteries Local law specifies a maximum penalty of \$50 for such an offence; resulting in this provision of the Cemeteries Local Law being inconsistent with the Cemeteries Act. As a consequence the JSC requested Council to give certain undertakings in relation to the Cemeteries Local Law, which resulted in Council resolving on 9 March 2016 as follows:

That the Council:

1. *Provides, in relation to the City of Busselton Cemeteries Local Law 2015, the following undertaking to the Joint Standing Committee on Delegated Legislation:*
 - a) *To amend by no later than 25 August 2016 clause 9.1 of the local law by replacing the amount of \$50 with the amount of \$20;*
 - b) *Not to enforce the continuing fine under clause 9.1 of the local law until it has been amended in accordance with resolution 1(a) above; and*
 - c) *Where the local law is made publicly available, whether in hard copy or electronic form, ensure that the law is accompanied by a copy of these undertakings.*

2. *Commences the law-making process for amending the City of Busselton Cemeteries Local Law 2015, the purpose and effect of the amendment local law being as follows:*

Purpose: To amend clause 9.1 of the City of Busselton Cemeteries Local Law 2015 to ensure consistency with the Cemeteries Act 1986.

Effect: Replacement of the penalty \$50 for a continuing offence under clause 9.1 of the City of Busselton Cemeteries Local Law 2015 with a penalty of \$20 to achieve consistency with the relevant provisions under the Cemeteries Act 1986.

3. *Authorises the CEO to carry out the law-making procedure under section 3.12(3) of the Local Government Act 1995, by –*
 - (i) *giving Statewide public notice and local public notice of the proposed amendment of the local law; and*
 - (ii) *giving a copy of the proposed amendment local law and public notice to the Minister for Local Government.*
4. *That the CEO, after the close of the public consultation period, submit a report to the Council on any submissions received on the proposed amendment of the local law to enable the Council to consider the submissions made and to determine whether to make an amendment local law in accordance with section 3.12(4) of the Act.*

Pursuant to abovementioned Council resolution the City provided the requested undertakings to the JSC, gave Statewide and local public notice of the proposed Amendment Local Law and provided the Minister for Local Government and Communities with a copy of the public notice and proposed Amendment Local Law.

The proposed Amendment Local Law is now referred to Council for consideration to resolve whether or not to make the proposed Amendment Local Law.

STATUTORY ENVIRONMENT

The procedure for making an amendment local law is the same as the procedure for making a 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*.

In terms of 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 the Council.

If Council resolve to make the proposed Amendment 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. 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 at or obtained from the City offices.

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

RELEVANT PLANS AND POLICIES

None.

FINANCIAL IMPLICATIONS

Costs associated with the advertising and gazettal of the proposed Amendment 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 Amendment Local Law should not have any other financial implications for the City.

Long-term Financial Plan Implications

Abovementioned expenses will not impact on the City's Long-term Financial Plan.

STRATEGIC COMMUNITY OBJECTIVES

The proposal aligns with the *City of Busselton Strategic Community Plan 2013* as follows:

6.2 Governance systems that deliver responsible, ethical and accountable decision making.

RISK ASSESSMENT

The proposed Amendment Local Law does not involve any significant changes from current practices and is therefore considered low risk with no risks identified as "medium" or greater.

CONSULTATION

The proposed Amendment 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 were received.

The proposed Amendment Local Law was also given to the Minister for Local Government and Communities for consideration and comment. Except for minor drafting changes, the Department of Local Government and Communities, who responded on behalf of the Minister, did not require any variations to the proposed Amendment Local Law.

OFFICER COMMENT

Section 55 of the Cemeteries Act provides local governments with the heads of power to make local laws that are necessary or convenient for the purposes of this act. In terms of Section 55(1)(p) a local law may provide that contravention of a local law constitutes an offence and provide for penalties not exceeding a fine of \$500 and, if the offence is a continuing one, to a further fine not exceeding \$20 for every day or part of a day during which the offence has continued.

Clause 9.1 of the Cemeteries Local Law, which was made in accordance with the provisions of Section 55(1)(p) of the Cemeteries Act, specifies the further fine for a continuing offence as "not exceeding \$50 for every day or part of a day during which the offence has continued". The amount of \$50 (instead of \$20 as prescribed under the act) is a typographical error and clearly inconsistent with the relevant provisions of the Cemeteries Act. In order to rectify this error the amount of \$50 in clause 9.1 of the Cemeteries Local Law must be replaced with \$20. No other amendments to the local law are required as a consequence of this change.

The proposed amendment is consistent with the undertakings provided by the City to the JSC. It is therefore recommended that Council resolve to make the proposed Amendment Local Law.

CONCLUSION

The proposed Amendment Local Law will achieve consistency between the relevant provisions of the Cemeteries Local Law and the Cemeteries Act and avoid disallowance of the Cemeteries Local Law by Parliament.

OPTIONS

Cognisant of the undertakings given by Council to the JSC to effect the proposed amendment and given the matter has previously been considered by Council and obtained unanimous support, it is considered that Council have no other option than adopting the Officer Recommendation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

If Council resolve to make the proposed Amendment Local Law, the local law will 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.

Committee Recommendation and Officer Recommendation

PL1606/075 Moved Councillor G Henley, seconded Councillor R Reekie

ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED

That the Council:

1. Resolves to make the City of Busselton Cemeteries Amendment Local Law 2016 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 Cemeteries Amendment Local Law 2016 in accordance with section 3.12(5) and section 3.12(6) of the Local Government Act 1995.

CARRIED 4/0

BY ABSOLUTE MAJORITY

11.19am At this time the Property Management Coordinator entered the meeting.

6.3 POLICY: LEASES OF CITY LAND AND BUILDINGS

SUBJECT INDEX:	Leasing
STRATEGIC OBJECTIVE:	Governance systems that deliver responsible, ethical and accountable decision-making.
BUSINESS UNIT:	Finance and Corporate Services
ACTIVITY UNIT:	Property Services
REPORTING OFFICER:	Director, Finance and Corporate Services - Matthew Smith Property Management Coordinator - Sharon Woodford-Jones
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Draft Leases of City Land and Buildings Policy

PRÉCIS

There is currently no formal Council policy that covers the leasing of City owned and controlled land. City officers have prepared a policy which seeks to guide leasing practices to ensure consistency and transparency. This report outlines the rationale behind that policy and seeks its endorsement and adoption.

BACKGROUND

The City's property portfolio comprises a mixture of land and buildings consisting of freehold ownership and reserves vested by management order or leased from the Crown on a long term basis to the City. The City leases property to a variety of lessees, including individuals, not for profit organisations, sporting and community groups, agencies and organisations providing essential services as well as commercial entities. Prominent examples of buildings and land currently part of this portfolio are the Busselton Community Resource Centre – a public building comprising a mixture of office premises and meeting rooms for occasional hire and the Locke Estate – 16 campsites leased to community groups for specific purposes. There are numerous ovals and sporting facilities as well as buildings leased to not for profit organisations for a variety of purposes. The City also have existing leasehold arrangements with commercial lessees on the Busselton foreshore and as the Busselton and Dunsborough foreshores redevelopment progresses, more commercial and/or mixed use ventures are expected.

A number of policies exist which impact on the use of land and buildings such as the Commercial Hire Sites Policy and the Trading in Public Places Policy but there is no policy which deals specifically with the granting of exclusive possession for a fixed term in the form of a lease. The same can be said of the approach to ongoing management of lessees and licensees and the method of assessing requests for renewal.

A uniform and transparent approach to leasing City owned or managed land and buildings will give clear direction and guidance to all those involved and affected. Council decisions have generally established a consistent approach and a move towards standardisation of terms and conditions; the proposed Leasing Policy (the Policy) seeks to capture and reinforce this.

STATUTORY ENVIRONMENT

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

The Land Administration Act 1997 (WA) governs management of Crown Land. The City is responsible for the care, control and management of land reserved by the Minister for Lands under the Land

Administration Act 1997. The City manages land in accordance with Management Orders made under section 46 of the Act which may include a power to lease or licence the whole or a part of the land. Any proposal to lease or licence land may not proceed without the prior written approval from the Minister.

RELEVANT PLANS AND POLICIES

Policy 019 Building Insurance deals with the provision of insurance by the City and requirements for reimbursements due from lessees of City buildings.

The Building Asset Management Plan is a framework for determining the extent to which existing buildings (which would include leased buildings or buildings constructed on leased land) should be maintained. It will be referred to as a guide when assessing and negotiating the maintenance provisions in a lease and, in certain circumstances, could impact on the term to be granted.

FINANCIAL IMPLICATIONS

There are financial implications associated with individual leases. However, there are not any additional financial implications for the draft policy as it largely reflects the existing practices of the City in relation to leasing.

Long-term Financial Plan Implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The adoption of this policy is consistent with the following Strategic Community Plan objectives:

- Key Goal Area 2 - Infrastructure assets are well maintained and responsibly managed to provide for future generations
- Key Goal Area 6 – A Council that engages with its community and makes responsible decisions, respecting communities’ needs and aspirations, and in particular Strategic Community Objective 6.2 “Governance systems that deliver responsible, ethical and accountable decision making”

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City’s risk assessment framework. No risks were found where the residual risk, once controls have been identified, were considered to be ‘medium’ or greater.

CONSULTATION

Whilst there has been no specific consultation with the community in relation to the proposed Leasing Policy, it reflects the Council’s general approach to leasing and lease management and in the main seeks to formalise this. The policy also endeavours to address some of the concerns that have been expressed by some groups associated with relatively recent community group lease renewals regarding the duration of the lease and security of tenure.

OFFICER COMMENT

There are many variables associated with the leasing of land and buildings. The Policy proposed is designed to encompass the majority of issues encountered and provide comprehensive guidance and consistency of approach.

The Policy therefore includes the following:

Leasing principles

The Policy contains a standard set of principles to be applied when assessing a proposal from either a potential not for profit or commercial lessee. The criteria and factors for consideration are not designed to be exhaustive but will guide Council and officers in the assessment of the appropriateness of a lease and any specific terms and conditions applicable in the circumstances. Matters such as overall community benefit and the improvement to sporting, recreational and cultural amenity will feature in this process. Detailing the factors that may be relevant to a decision provides the framework for both the form of a request for a lease and its assessment.

Criteria

Potentially, there are a wide range of issues that Council will want to consider when deciding whether to enter into a lease and the Policy therefore identifies those that could apply depending on the type of lessee, the duration of the lease and the nature of the proposed use. The Policy reflects that certain criteria will apply in every case regardless of the type of lessee but also identifies those that are specifically relevant to not for profit/community organisations and commercial lessees.

The Duration of a Lease

The policy distinguishes between commercial and non-commercial lessees and provides that the term of a lease to a not for profit, sporting or community organisation will generally be for a period of 5 years with an option (exercisable by the lessee) of the grant of a further 5 years. This is reflective of the term of the majority of the City's existing community group leases. The length of term is intended to ensure a level of certainty of tenure for community groups to enable forward planning and associated expenditure, while ensuring the City can still review arrangements every 10 years to ensure the intended community benefit is still being achieved.

There may, however, be occasions where a community group is well established and/or has made a significant capital investment to a building in which case a longer term might be justified. The Policy provides for this and also states that the overall benefit to the community which the lessee provides will be a factor in determining whether a longer term lease should be granted.

The Policy provides for the ability for the City to grant a longer term via a 10 year initial term plus a 10 year option. In these circumstances, it is intended that the 10 year option would provide the City as lessor with the opportunity to review the lease after 10 years and make minor changes to leased area or terms that might be necessary for the benefit of the community while still giving the community group lessee the guarantee of up to a 20 year lease term.

The policy also provides for longer term for leases that relate to the provision of emergency and essential services.

The duration of a commercial lease is for more variable and dependent on the situation and individual negotiations.

CONCLUSION

The policy is designed to provide a framework for leasing and to guide Council and officers in decision making. It is intended to provide a balance between the needs of the community and the City's responsibilities for the upkeep, appropriate usage and protection of City land and property assets. The principles in the policy are largely reflective of the established approaches and practices of the City in relation to leasing of property. It is recommended that the Council adopt the Leasing Policy.

OPTIONS

Council can decide not to adopt the proposed Leasing Policy or to make changes to the policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Leasing Policy is made upon adoption by Simple Majority resolution of Council. The City's Policy Manual will be updated to include it within 14 days of the resolution.

Committee Recommendation and Officer Recommendation

PL1606/076 Moved Councillor R Bennett, seconded Councillor C Tarbotton

That the Council adopts the Leases of City Land and Buildings Policy:

	Leases of City Land and Buildings	V1 Draft
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1. PURPOSE

The City's land and buildings are an important resource for the community and should be managed in a manner that reflects the goals and aspirations of the City's Strategic Community Plan to ensure there is a good range and quality of services and facilities available to the community.

The purpose of this policy is to provide a framework and methodology to facilitate responsible and effective utilisation of City owned and controlled land and buildings in a consistent manner that achieves maximum community benefit.

2. SCOPE

This policy applies to any grant of a right of exclusive of land or buildings within the City of Busselton district, being either land owned outright by the City of Busselton or land owned by the Crown and managed by the City. It does not cover licences for occasional or short term hire or non-exclusive use of Council property (such as the hire of rooms or halls for a day or the hire of sporting grounds for limited periods).

3. DEFINITIONS

A Lease is an agreement in which the Landlord (or Lessor) agrees to give the Tenant (or Lessee) the exclusive right to occupy land for a specific term.

A Licence is a contractual right for the Licensee to carry out a permitted activity on land or within a building without the right of exclusive occupation.

4. RELEVANT LEGISLATION AND POLICY

The Land Administration Act 1997 (WA) governs leases on Crown Land. The City is responsible for the care, control and management of land reserved by the Minister for Lands under the Land

Administration Act 1997. The City manages land in accordance with management orders made under section 46 of the Act which may include a power to lease or licence the whole or a part of the land. Any proposal to lease or licence land may not proceed without the prior written approval from the Minister.

The Local Government Act 1995 governs all systems and operations of local governments in Western Australia. The City is bound by specific conditions under this Act with regard to the disposal of property. Section 3.58 of the Act provides that a local government can only dispose of property by public auction, public tender or by undertaking the local public notice procedure set out in section 3.58(3). In this context, disposing of property means to 'sell, lease or otherwise dispose or, whether absolutely or not', but does not include licensing.

However, there are a number of exemptions to these requirements set out in regulation 30 of the Local Government (Functions & General) Regulations 1996. These include:

- Where property is to be disposed to not for profit, charitable, benevolent, religious, cultural, educational, recreational or sporting organisations; and
- If the property is to be occupied for a period of less than two (2) years and the agreement does not give exclusive possession.

The City of Busselton Strategic Community Plan 2013 sets out the community goals, aspirations and objectives for the next ten (10) years. It is reviewed every four (4) years. Any proposals for leasing or licencing property within the City of Busselton will be required to fit within the key goals and objectives outlined in the plan.

The Building Asset Management Plan is a framework for determining the approach to building maintenance (which includes leased buildings or buildings constructed on leased land). Where relevant, it may guide the maintenance provisions in a lease and, in certain circumstances, could impact on the term to be granted.

5. LEASING PRINCIPLES

5.1 The provision of benefits to the community through leasing

Leasing should support the development of healthy communities and, where appropriate, promote positive social, economic and environmental outcomes. Factors that may be taken into account in assessing a report to lease include, but are not limited to, the following:

Community

- Consideration of benefits to the community;
- Promotion of public health and wellbeing;
- Improvement of sporting, recreational and cultural facilities;
- Protection of public land values; and
- Any other impacts on social, economic and environmental outcomes.

Commercial

- Attracting investment and enhancement of an amenity (e.g. Busselton and Dunsborough foreshores);
- Creation of employment;

- Promotion of tourism;
- Economic return; and
- Impacts on social, economic and environmental outcomes

5.2 **Governance that meets ethical and statutory standards**

Consideration must be given to the purpose of the City entering into a lease and whether it provides for the effective control and management of the land, building and/or facility.

The following are factors that may be relevant to Council's assessment of a proposal:

- The ability, in terms of experience and competence, of the prospective tenant to fund, resource and manage the lease over the lease term;
- The potential opportunities for future utilisation of the asset;
- The existence of any statutory restrictions or implications for heritage or conservation value of the asset;
- The extent and current use of the land proposed to be leased and the impact on adjoining land;
- Whether the purpose of the lease and activities proposed meet the objectives of Council strategies and initiatives;
- Whether the proponent proposes a capital works programme that is compatible with the authorised purpose and the Council's vision for the land or facility;
- The overall financial viability of the proposal;
- The outcome of any consultation processes if considered necessary;
- Any potential risks to the City and/or the Community of entering into the arrangement; and
- Whether the proposal achieves the highest and best use of the land or facility.

6. LEASES TO NOT FOR PROFIT, SPORTING AND COMMUNITY ORGANISATIONS

6.1 **Criteria**

In addition to the generic governance factors listed in section 5.2, the following are criteria that should be applied to the assessment of a proposed lease. The outcome of that assessment would assist in determining the terms and conditions of the lease.

- The aims and objectives of the organisation as expressed in its Constitution;
- The history and experience in the area of activity expressed in the aims and objectives;
- The length of time the organisation has been active in the district and/or its connection with the community;
- The services offered to the community;

- Whether there are other organisations nearby offering the same or similar services and the demand for such services;
- The costs and expenses Council would incur for maintenance and other outgoings if it did not lease the land or building;
- Whether the organisation is able to generate an income from the premises and if so whether that income is used for the leased premises only or the services to the local community;
- Financial viability and the potential to be self-funded through membership and social activities;
- The ability to obtain insurance for public liability, building and contents;
- The ability to provide at least one year's accounts and any other financial information considered appropriate;
- Good governance practices including annual general meeting and appropriate policies and procedures;
- The ability to enter into regular communication with the broader community where appropriate; and
- A program of social and/or community activities and events for members, the broader community and visitors to the district.

7. DURATION OF LEASE

7.1 Not for Profit, Sporting and Community Organisations

The usual or standard length of lease term for leases to not for profit, sporting and community organisations would generally be for a period of five (5) years with an option for the lessee to extend the term by a further five (5) years subject to being in compliance with lease obligations. By offering a five (5) year term with a five (5) year option the intention is to find the balance between the need for the community group lessee to have security of tenure and thus be able to effectively run its services and facilities for the benefit of the community and the obligation on the City to ensure that community resources are utilised in an appropriate and effective manner. A review of tenure arrangements every ten (10) years enables the City to ensure that community land continues to be effectively and appropriately used and sufficient community benefit is being achieved and provides an opportunity to review lease terms to ensure they are current.

There may be circumstances where it would be appropriate to offer a lease term to a not for profit, sporting or community organisation which is longer than five (5) years with a five (5) year option. In those circumstances lease terms would usually not exceed twenty-one (21) years, which is usually the maximum period for which a reserve vested for community purposes can be leased in accordance with the usual terms of a reserve management order. The factors which would support the granting of a community group lease for a longer overall term than ten (10) years in total include:

- The record of the relevant community group and in particular whether it has an established history of providing quality services and/or facilities to the community from the leased land;
- Whether the community group has paid for or substantially contributed to the construction of the buildings and/or facilities on the leased land and/or whether they have made or it is proposed that they will make a significant capital investment in those buildings and/or

facilities;

- The extent of the membership of the community group and/or the number of persons utilising the services and/or facilities on the leased land; and
- The quality of the governance of the community organisation and its compliance history and/or demonstrated capacity to comply with lease obligations.

The City may elect to grant a longer term in the form of up to a ten (10) year lease with up to a ten (10) year option. An option in these circumstances may be subject to additional criteria that could enable the City to review such things as the leased area and/or rent and other terms to ensure that they are appropriate to meet the needs and best interests of the community at that time, while not altering the fundamental nature of the lease.

There are circumstances in which community groups may be given leased terms which are less than ten (10) years. This will be appropriate in the circumstances where a shorter or different lease term is consistent with the business plan or overall management requirements of a larger facility such as in the case of the Busselton Community Resource Centre and the ArtGeo Old Court House Cultural Complex.

7.2 Renewal of Lease to Not for Profit, Sporting and Community Organisations

The following factors are relevant when the City is considering whether or not to grant a renewal of an expiring lease to a not for profit, sporting or community organisation:

- The extent of compliance by the lessee throughout the term, including whether the lessee has properly maintained the premises as required and/or completed any required works;
- Whether the lessee has demonstrated good governance practices throughout the term of their lease;
- Whether demand by other groups for access to land or premises has increased or decreased and whether it is appropriate for one organisation to continue to have exclusive use; and
- The level of community benefit the lessee provides.

The principles and factors referred to in paragraph 7.1 are also relevant in considering the length of term granted where a community group lease is renewed.

7.3 State Government Agencies and Providers of Essential Services

Leases to State government agencies or organisations that provide essential services will generally be granted a longer term that is reflective of the nature of the services and facilities that these organisations provide. The Lessee in such circumstances will generally take full responsibility under the lease for the construction and ongoing maintenance of the facility and associated outgoings and other costs.

Organisations within this category currently include St John's Ambulance, the Volunteer Marine Rescue Service, the Department of Child Protection and Family Protection and the Department of Fire and Emergency Services (DFES). The nature of the service provided and the level of capital investment will be taken into consideration when determining the duration of a lease, noting that generally leases of reserve land generally cannot exceed twenty-one (21) years in length.

7.4 Commercial Leases

The term of Commercial leases will be negotiated on a case by case basis.

8. RENT AND OUTGOINGS

8.1 Not for Profit, Sporting and Community Organisation

Generally the City will charge a nominal rent, established each year as part of the fees and charges schedule, in relation to leases to not for profit, sporting and community organisation. Leases of this type will generally require the lessee to meet the full cost of the building and facilities leased including construction, maintenance, utilities and insurance.

Where a building or facility is provided by the City and the City retains responsibility for maintenance and other outgoings, rents should be sufficient to meet or substantially contribute to the cost of such maintenance and outgoings including insurance. The rent should also be sufficient to meet or contribute to the funding required for ongoing management in accordance with the relevant building asset management plan.

8.2 Commercial Leases

Rent and other payments associated with commercial leases will be negotiated on a case by case basis.

9. FORM OF COMMUNITY GROUP LEASE

The City maintains a standard form Community Group lease that deals with a range of usual leasing matters such as payment of rent and outgoings, rent reviews, insurance requirements and payment of building insurance, permitted use, maintenance and repair, rights of access of other groups and other statutory and miscellaneous obligations. The City's standard community group lease will be used for all leases to not-for-profit, sporting and other community organisations.

Policy Background

Policy Reference No. -

Owner Unit – Property Services

Originator – Property Management Coordinator

Policy approved by –

Date Approved –

Review Frequency – As Required

Related Documents –

History

Council Resolution	Date	Information

CARRIED 4/0

7. GENERAL DISCUSSION ITEMS

Nil

8. NEXT MEETING DATE

Thursday, 21 July 2016

9. CLOSURE

The meeting closed at 11.33am.

THESE MINUTES CONSISTING OF PAGES 1 TO 19 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON THURSDAY, 21 JULY 2016.

DATE: _____

PRESIDING MEMBER: _____