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**CITY OF BUSSELTON**

**MINUTES FOR THE COUNCIL MEETING HELD ON 8 MARCH 2017**

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## MINUTES

MINUTES OF A MEETING OF THE A MEETING OF THE BUSSELTON CITY COUNCIL HELD IN MEETING ROOM ONE, COMMUNITY RESOURCE CENTRE, 21 CAMMILLERI STREET, BUSSELTON, ON 8 MARCH 2017 AT 5.30PM.

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

The Presiding Member opened the meeting at 5.37pm.

### 2. ATTENDANCE

#### Presiding Member:

Cr Grant Henley Mayor

#### Members:

Cr Coralie Tarbotton  
Cr Ross Paine  
Cr Terry Best  
Cr John McCallum  
Cr Rob Bennett  
Cr Paul Carter  
Cr Robert Reekie  
Cr Gordon Bleechmore

#### Officers:

Mr Mike Archer, Chief Executive Officer  
Mr Oliver Darby, Director, Engineering and Works Services  
Mr Paul Needham, Director, Planning and Development Services  
Mrs Naomi Searle, Director, Community and Commercial Services  
Mr Cliff Frewing, Director, Finance and Corporate Services  
Miss Hayley Barge, Administration Officer, Governance

#### Apologies

Nil

#### Approved Leave of Absence

Nil

#### Media:

"Busselton-Dunsborough Times"  
"Busselton-Dunsborough Mail"

#### Public:

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### 3. PRAYER

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

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

Nil

**Public Question Time**

Nil

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

The Mayor advised Councillors that he would be writing to the Federal Minister for Environment and Energy, the Hon. Josh Frydenberg MP urging him for his support in the future funding of the National Climate Change Adaptation Research Facility.

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

Nil

**6. APPLICATION FOR LEAVE OF ABSENCE**

Nil

**7. PETITIONS AND PRESENTATIONS****7.1 Petitions**

Nil

**7.2. Presentations**

Mr Jeremy Warren addressed the Council in accordance with Section 6.10 of the Standing Orders as a party with an interest in Item 11.1. Mr Warren was generally not in agreement with the Officer Recommendation.

Mr Kieran Wong of CODA addressed the Council in accordance with Section 6.10 of the Standing Orders as a party with an interest in Item 11.3. Mr Wong was generally in agreement with the Officer Recommendation.

**8. DISCLOSURE OF INTERESTS**

Nil

**9. CONFIRMATION AND RECEIPT OF MINUTES****Previous Council Meetings****9.1 Minutes of the Council Meeting held 22 February 2017****Council Decision**

**C1703/034**

Moved Councillor G Bleechmore, seconded Councillor P Carter

That the Minutes of the Council Meeting held 22 February 2017 be confirmed as a true and correct record.

**CARRIED 9/0**

**Committee Meetings**9.2 Minutes of the Policy and Legislation Committee Meeting held 16 February 2017**Council Decision****C1703/035** Moved Councillor P Carter, seconded Councillor C Tarbotton

- 1) That the minutes of the Policy & Legislation Committee Meeting held 16 February 2017 be received.
- 2) That the Council notes the outcomes from the Policy & Legislation Committee Meeting held 16 February 2017 being:
  - a) The Review of Planning Delegates item is presented for Council consideration at item 10.1 of this agenda.
  - b) The Review of Policy 229 – Elected Members Mail Handling item is presented for Council consideration at item 10.2 of this agenda.
  - c) The Review of Building Lists – The Sale of item is presented for Council consideration at item 10.3 of this agenda.
  - d) The Review of Salary Packaging Policy item is presented for Council consideration at item 10.4 of this agenda.
  - e) The Review of Policy 018 Customer Service item is presented for Council consideration at item 10.5 of this agenda.
  - f) The Review of legal Representation – Costs Indemnification Policy and Associated Instrument of Delegation item is presented for Council consideration at item 10.6 of this agenda.
  - g) The general discussion item on Shelters and Structures on Beaches is noted.

**CARRIED 9/0**

**ITEMS BROUGHT FORWARD AND ADOPTION BY EXCEPTION RESOLUTION**

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

**Council Decision / Committee Recommendation and Officer Recommendation**

**C1703/036** Moved Councillor J McCallum, seconded Councillor T Best

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



- 10.2 Policy and Legislation Committee - 16/02/2017 - REVIEW OF POLICY 229 - ELECTED MEMBERS MAIL HANDLING
- 10.3 Policy and Legislation Committee - 16/02/2017 - BUILDING LISTS - THE SALE OF - FOR REVIEW
- 10.4 Policy and Legislation Committee - 16/02/2017 - SALARY PACKAGING POLICY
- 10.5 Policy and Legislation Committee - 16/02/2017 - REVIEW OF POLICY 018 - CUSTOMER SERVICE
- 15.1 COUNCILLORS' INFORMATION BULLETIN

**CARRIED 9/0**

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## 10. REPORTS OF COMMITTEE

### 10.2 Policy and Legislation Committee - 16/02/2017 - REVIEW OF POLICY 229 - ELECTED MEMBERS MAIL HANDLING

<b>SUBJECT INDEX:</b>	Mail Handling
<b>STRATEGIC OBJECTIVE:</b>	Governance systems that deliver responsible, ethical and accountable decision-making.
<b>BUSINESS UNIT:</b>	Information Services
<b>ACTIVITY UNIT:</b>	Records
<b>REPORTING OFFICER:</b>	Manager, Information Services - Hendrik Boshoff
<b>AUTHORISING OFFICER:</b>	Director, Finance and Corporate Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Policy 229 Elected Members Mail Handling showing tracked changes 
	Attachment B Revised Policy 229 - Elected Members Mail Handling 

**This item was considered by the Policy and Legislation Committee at its meeting on 16 February 2017, the recommendations from which have been included in this report.**

#### **PRÉCIS**

As part of the Council's ongoing policy review process the Elected Members Mail Handling Policy – Policy 229 is presented for review and updating to the current policy format. The review also lines up with the City's recent review of the City's Record Keeping Plan, which flagged this policy as requiring updating.

#### **BACKGROUND**

As part of the requirement under the State Records Act 2000 officers have reviewed the City's Record Keeping Plan and submitted the review results to State Records Office (SRO), which was approved by the State Records Commission at its meeting of 12 August 2016. One of the recommendations identified by officers and endorsed by the Commission is the requirement to review City of Busselton Council Policy 229 – Elected Members Mail Handling.

Council adopted the policy 10 March 2004 and it has not been reviewed since. This report documents the review of the policy. With changes recommended to the management of Elected Members Mail, in particular the mail handling guideline section has been updated to aid Councillors and officers to streamline the management of Elected Members corporate communications, as described in the State Records Act 2000:

*Local governments must ensure that appropriate practices are established to facilitate the ease of capture and management of elected members' records up to and including the decision making processes of Council*

#### **STATUTORY ENVIRONMENT**

This report proposes updates of Council Policy 229 Elected Members Mail Handling, which operates under the State Records Act 2000. Furthermore, 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 recommendation of a Committee it has established in accordance with Section 5.8 of the Act

## **RELEVANT PLANS AND POLICIES**

The Policy forms part of the City of Busselton's Record Keeping Plan as approved by the State Records Commission at its regular meeting of 12 August 2016.

## **FINANCIAL IMPLICATIONS**

Nil

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

Nil

## **STRATEGIC COMMUNITY OBJECTIVES**

The ongoing policy review process is part of the City's governance systems, which ensure responsible, ethical and accountable decision-making.

As the policy provides guidance for Council and the City about customer service expectations, the policy aligns with Council's Strategic Priority Key Goal Area 6:

“Open and Collaborative Leadership”

and more specifically with the Community Objective 6.3:

“An organisation that is managed effectively and achieves positive outcomes for the community”.

## **RISK ASSESSMENT**

Not required for this review of this Council policy.

## **CONSULTATION**

As part of the review of the City's Record Keeping Plan officers consulted extensively with internal stakeholders and the State Records Office, to ensure the City's Record Keeping Plan and the Elected Members Mail Handling Policy is in keeping with the State Records Act 2000, whilst ensuring the City's corporate records are functional and usable by the City administration. The proposed changes were presented to Councilors at a Council briefing session on 16 November 2016, at which time officers explained the proposed mail handling process and what Elected Member's responsibilities under the State Records Act 2000 are.

## **OFFICER COMMENT**

This report presents the review of the Elected Members Mail Handling Policy, which aligned with the City's review of the Record Keeping Plan as required by the State Records Commission (reviewed every five years). As technology has significantly improved from the original adoption of the Policy in 2004 and there are currently more digital record keeping avenues available; officers reviewed the management of each of these avenues. It was found the use of a quick lookup table would be the easiest way to reflect the various actions as it relates to each mail management mechanism.

Therefore, the most significant change to the Policy was the inclusion of a Mail Handling Guidelines lookup table, detailing the correspondence type and the subsequent actions to be taken. In addition to the easy lookup table, officers included the State Records Office Information sheet for Elected



Members to utilise as a guide in determining if a piece of correspondence is indeed a City corporate record or not.

### **CONCLUSION**

It is the considered view of officers making these changes to simplify the mail management process, which will assist both Councilors and officers in the management of the Elected Members correspondence, will ensure compliance with the State Records Act 2000 as detailed in the City's Record Keeping Plan.

### **OPTIONS**

The Council could choose not to change the policy or to make additional changes to the policy.

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

The policy amendments will be effective immediately upon adoption by the Council.

### **Council Decision / Committee Recommendation and Officer Recommendation**

**C1703/037** Moved Councillor J McCallum, seconded Councillor T Best

That the Council adopts the revised Council Policy 229 – Elected Members Mail Handling as shown in Attachment B.

**CARRIED 9/0**

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10.3 Policy and Legislation Committee - 16/02/2017 - BUILDING LISTS - THE SALE OF - FOR REVIEW

<b>SUBJECT INDEX:</b>	Community Policy
<b>STRATEGIC OBJECTIVE:</b>	Governance systems that deliver responsible, ethical and accountable decision-making.
<b>BUSINESS UNIT:</b>	Development Services and Policy
<b>ACTIVITY UNIT:</b>	Development Services and Policy
<b>REPORTING OFFICER:</b>	Manager, Development Services and Policy - Anthony Rowe
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Nil

**This item was considered by the Policy and Legislation Committee at its meeting on 16 February 2017, the recommendations from which have been included in this report.**

### **PRÉCIS**

To reaffirm the continued sale of the Building and Development List (Building Permits) for commercial purposes.

### **BACKGROUND**

The City's consideration is sought to making the list of recent building approvals (Building and Development List (Building Permits)) available sale for commercial purposes.

The arrangement for a business to purchase the Building and Development List is of longstanding, excess of 20 years.

The City has 27 subscribers to the list. These are companies purchase the lists either annually (\$272) or on a monthly basis (\$46).

The City sends updated lists to subscribers on a monthly basis. The City earns approximately \$6,000 from the sale of the list.

In addition to the commercial purchasers, the City also provides the same lists to the utility providers, ie Water Corporation, but this is provided at no charge.

The list contains:

- The applicants name – not the owner's
- The location
- The type of development
- The size/area of the building
- **The value of the development**

The City has not reviewed this policy since the Building Act, 2011, commenced operation in April 2012.

## STATUTORY ENVIRONMENT

### Building Act 2011

The most relevant legislation is the *Building Act, 2011*. At Section 129 of the Act it directs that the City must make the register of Building Permits available for public inspection during normal office hours.

Section 129 also provides a discretion to local government, that it may, on payment of a prescribed fee provide a copy of a *Register*. There is presently no prescribed fee, so in its absence a council can determine the charge.

Section 129 however, only refers only to an individual's request, it does not address the provision of the Register for commercial purposes.

This City has consulted the Building Commission. It has advised there is no restriction upon any council from distributing lists and setting a fee for that service.

## RELEVANT PLANS AND POLICIES

### Community Policy 039 Building and Development Lists

The Community Policy Building and Development Lists authorises that the register of Building and Development information (Building Permits) can be made available for commercial purposes at a charge set by the Council in its *Fees and Charges* schedule.

## FINANCIAL IMPLICATIONS

Nil

### Long-term Financial Plan Implications

Nil

## STRATEGIC COMMUNITY OBJECTIVES

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. The assessment identifies 'downside' risks only, rather than 'upside' risks as well.

A 'minor' reputational risk has been identified – the receipt of unsolicited mail. This is discussed in the *Officer Comment*, it is however a consequence Council's decision, it is not one applicable to a control/remedy.

## CONSULTATION

Western Australian Building Commission.

The Building Commission has advised that a council can make its list of building permits approved, available for purchase at a fee set by the council.

Public Consultation is not required as part of the Review of this Community Policy.

### **OFFICER COMMENT**

The City practice of making its building list available for sale is a longstanding one.

There is a statutory requirement to make the list available to the public for inspection by an individual but the *Building Act 2011* is silent about making the lists available beyond an individual enquiry.

Consultation with the Building Commission revealed the practice of selling lists is widespread and it is up to each council to determine the fee. Equally there is no compulsion upon a council to supply lists, or to charge for the supply of the list. The City could for instance make the list freely available and displayed on the City website.

The issues of potential concern are *privacy* and the facilitation of *unsolicited mail*.

### **Privacy**

Owners may be concerned about their privacy. The intention for s129 however, is the list should be available to people other than the owner. Other people most likely to **inspect** the *Register* are neighbors and prospective purchasers checking that all structures are approved.

Those **purchasing** the list are only interested in the recent approvals as their interest is in selling their products.

There are however opportunities to reduce some of the privacy concerns that the owners may have.

The information provided from the *Register*, and provided for purchase, is already limited. It only identifies the development's location, the applicant/builder (not the owner), a broad description of the work, the value, and the building area. It does not include any building plans that might give rise to concern about security.

It is conceivable that the "value of works" in particular, may give rise for embarrassment for the owner.

Generally speaking an explicit identification of building value is not necessary because the building industry, that purchases the list, will have an expectation of the cost of a development from its application description, the building size and its location.

The value of the building work is not relevant to the Utility providers that are also provided with the list, the value of work is also not an essential requirement of the Register, pursuant to s.129.

There is no practical benefit in providing details of the 'value of works' to warrant the potential concern for privacy and anxiety that it might cause for some owners.

### **Un-solicited mail**

The Building list has a value to a broad range of businesses who may be interested in 'direct mail' as a means to advance consideration of their services or products. Building lists have been made widely available for excess of 30 years.

Making the list commercially available means the property owner/occupiers will receive unsolicited mail and may be inconvenienced by it. This would occur regardless of whether the City charges for the list or makes it freely available.

The availability/refreshing the list on a monthly basis is considered to be an adequate frequency. The availability on an annual basis, as an alternative, would be too long; the purchasing decisions would mostly have been completed by the owner during this timeframe.

At this time electronic details about the owner are not available, so the promotions are usually made by hard copy to the 'Occupier' at the development address.

There has been a rapid advance in the way companies can now obtain information for marketing purposes. Over time these advances, through direct and indirect information, are expected to overtake the value of the City service in providing the Building lists.

In the meantime the City's Building list will remain a simple way of identifying potential customers for many small businesses in the Busselton area.

## CONCLUSION

The City is required to keep a *Register* of building permits issued and obliged to supply a list of Building approvals to Utility providers.

The sale of the list has the benefit of offsetting the costs of preparing the list. Whilst maintaining a list is a straight forward process, it does rely on the City's investment in Information Technology systems to produce it. It is recommended that the City continue to make the list available for purchase, but that the current policy be modified as follows:

"Community policy 039 – Building Permit lists

A list of Building Permits issued by the City each month can be made available for commercial purposes, to be purchased at a fee determined annually by the City.

The information to be provided will be limited to only the following items:

- The applicants name
- The location
- The development floor area size
- The type of development

Please note that the 'value' of works is not to be included in the contents of the list for the purpose of improving the privacy for the property owner.

## OPTIONS

1. Support the Officer Recommendation – replace Community Policy 039, as per the *Officer Recommendation*
2. Delete Community Policy 039, and cease making the Building and Development List available for commercial services, and refund the proportion remaining on any current 12 month subscription.
3. Delete Community Policy 039 and make the City's Building Permit register available to view at the City's website (in addition to maintaining the copy for inspection at the City Offices) and refund the proportion remaining on any current 12 month subscription.
4. Retain Community Policy 039, subject to further amendment.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

To come into effect upon resolution of Council.

**OFFICER RECOMMENDATION**

That Council resolve to replace the Community Policy – *039 Building and development Lists*, with:  
“Community policy 039 – Building Permit lists

A list of Building Permits issued by the City each month can be made available for commercial purposes, to be purchased at a fee determined annually by the City.

The information provided will be limited to only the following items

- The applicants name
- The location
- The development floor area size
- The type of development”

Note: The Committee proposed an Alternative Motion for consideration that would make the list available on the City’s webpage.

**Council Decision and Committee Recommendation**

**C1703/038** Moved Councillor J McCallum, seconded Councillor T Best

That Council resolve to replace the Community Policy – *039 Building and development Lists*, with:  
“Community policy 039 – Building Permit lists

A list of Building Permits issued by the City each month to be made available via the City’s webpage.



The information provided will be limited to only the following items

- The applicants name
- The location
- The development floor area size
- The type of development”

**CARRIED 9/0**

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10.4 Policy and Legislation Committee - 16/02/2017 - SALARY PACKAGING POLICY

<b>SUBJECT INDEX:</b>	Policy, Procedures and Manuals
<b>STRATEGIC OBJECTIVE:</b>	An organisation that is managed effectively and achieves positive outcomes for the community.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	Human Resources
<b>REPORTING OFFICER:</b>	Manager Corporate Services - Sarah Pierson
<b>AUTHORISING OFFICER:</b>	Director, Finance and Corporate Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Salary Packaging Policy  Attachment B Salary Packaging Policy - Track Changes 

**This item was considered by the Policy and Legislation Committee at its meeting on 16 February 2017, the recommendations from which have been included in this report.**

### PRÉCIS

This report presents a revised Salary Packaging Policy (Attachment A) for Council approval, with the Policy having been simplified and more operational aspects moved into a new operational level practice and procedure.

Salary packaging is considered an effective attraction and retention tool and continuing to offer these benefits will assist the City in meeting its Workforce Planning strategy of “Retaining our staff through attractive remuneration, benefits and innovative practices”.

### BACKGROUND

In April 2012 Council endorsed a new Salary Packaging Policy which allowed City employees to salary package a number of benefits in addition to those that were available at the time (Superannuation, City uniforms and recreational facility fees). These additional benefits were Remote Area Rent, Living Away From Home Allowance and Novated Leasing of Vehicles (C1204/095). The policy provided that an external provider specialised in packaging arrangements administer these benefits. To this end the City has been working with Pay Plan for the past nearly five (5) years.

As part of the 2013 Enterprise Agreement negotiations staff requested that the City further look into the possibility of providing additional benefits that would allow them to access greater tax savings through a legitimate avenue. In particular employees with mortgages were seeking the ability to access remote area housing assistance. The City committed to further researching the options available noting its obligation to ensure that any benefits introduced could be effectively managed and did not pose a risk for the City.

As a result of this research Officers identified a number of additional benefits that could be offered, namely:

- Airline Lounge Membership
- Remote Area Housing Mortgage Interest
- Remote Area Domestic Energy

In August 2014 Council endorsed a revised Salary Packaging Policy which included the provision of these additional benefits (C1408/197). Living Away From Home Allowance however was removed on the basis that it had very limited availability to the City, with legislative changes having reduced this further since adoption of the policy in 2012.

The remote area benefits provided within the policy are available to employees by virtue of a portion of the City of Busselton and surrounding localities being considered a 'Remote Locality' by the ATO. Under the ATO's definition of 'remote area' a locality is considered remote if it is one of the following:

- At least 40 kms from an urban centre with a population of 14,000 or more
- At least 100 kms from an urban centre with a population of 130,000 or more

Remote area concessions can be utilised to offset the increased cost of living expense incurred by individuals living in a remote locality with Fringe Benefits Tax (FBT) exemptions / concessions for the City.

## **STATUTORY ENVIRONMENT**

Salary packaging is a complex area of remuneration management and the Council must comply with the requirements of the Australian Taxation Office ("ATO") and relevant State and Federal taxation legislation and regulations associated with FBT and salary packaging.

### **Fringe Benefits Tax**

Legally FBT is payable by the employer for any non-cash benefits provided to employees. There are however certain benefits which are classified as concessional or FBT exempt benefits. With the exception of novated lease motor vehicles, remote area housing for mortgages and remote area domestic energy, the benefits offered under the policy are FBT exempt. Remote area housing for mortgages and remote area domestic energy attract FBT on 50% of the value packaged. Under the current policy any FBT costs and / or related costs associated with the benefits are borne by the employee and factored into the packaging arrangement.

Fringe benefits provided to staff (whether salary packaged or not) are, unless exempt, required to be reported on a staff member's **Payment Summary** where the aggregate taxable value exceeds \$2,000 per FBT year. Further it is the grossed-up value (i.e. multiplied by 1.9417) that is required to be shown on the Payment Summary. Whilst this amount will not be taxable income, it will be taken into account for the purposes of determining the application of certain surcharges, levies and Government entitlements, such as the additional Medicare levy and Family Tax Benefits. Employees need to be aware of this and seek their own financial advice prior to entering into any salary packaging arrangement.

### **Australian Taxation Office Requirements – Tax Compliance**

Employees cannot claim a tax deduction on packaged benefits and are required to observe all standards set by the ATO regarding salary packaging. The standards require complete proof of expenditure and adherence to the employees nominated flexible remuneration. Regular requests for proof of expenditure are undertaken by the City's external salary packaging provider. Failure to observe these standards can result in ATO penalties for the employee.

## **RELEVANT PLANS AND POLICIES**

The Salary Packaging Policy provides for improved employee benefits, and aids the City in achieving its Workforce Plan strategy of "Retaining our staff through attractive remuneration, benefits and innovative practices.

The aim of this policy revision is to simplify the policy and remove some of the operational level detail that is more suited to an operational practice and procedure. A Salary Packaging Operational Practice and Procedure (OPP) has been created to ensure we maintain clear parameters and controls for the application of salary packaging at the City.



## **FINANCIAL IMPLICATIONS**

The revised policy has no additional financial implications. The cost of any associated fees and charges for each package arrangement (administrative or FBT) are borne by the employee.

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

Nil

## **STRATEGIC COMMUNITY OBJECTIVES**

The Officers recommendation aligns with and supports the Council's Strategic Community Plan 2013 (review 2015), specifically Key Goal – "Open and Collaborative Leadership" and Community Objective 6.3 – "An organisation that is managed effectively and achieves positive outcomes for the community".

## **RISK ASSESSMENT**

The revised policy does not materially change the City's position or offering in relation to salary packaging, and hence poses no risk.

A risk assessment was previously undertaken to assess potential risks associated with offering salary packaging benefits to employees, with the overall risk being assessed as low. In introducing the current range of benefits the City sought and received Tax Rulings from the ATO on various aspects and liaised extensively with its tax advisers.

The City, through its external administrator Pay-Plan, conducts a thorough assessment of eligibility prior to packaging benefits, with employees having to provide documentary evidence related to the benefit being claimed, for instance rental agreements in relation to remote area rent and mortgage settlement documents and loan statements in relation to remote area mortgage interest.

A Salary Packaging Agreement is also entered into between the City, Pay-Plan and the employee which contains obligations for the employee to comply with all ATO and declaration requirements.

## **CONSULTATION**

No consultation has been done in relation to the revision of this policy, although Officers have checked with the ATO website to confirm that parts of the City are still considered a remote area.

## **OFFICER COMMENT**

The revised policy presented does not materially change the City's position or offering in relation to salary packaging. The policy is simply being streamlined with more operational aspects removed and instead covered in a new OPP.

There are currently 36 employees who take advantage of the benefits offered through the policy with 33 packaging remote area rent, 1 remote area mortgage interest, 5 remote area domestic energy and 3 novated leasing a vehicle.

A brief overview of the salary packaging benefits available is provided below.

**Work Related Items**

Where used for **work purposes only**, and not provided by the City, the following items may be paid for from an employee's pre-tax salary:

- portable electronic devices (laptops, mobile phones and PDA's)
- protective clothing
- briefcase
- calculator
- computer software

**Airline Lounge Membership**

Employees can apply to salary package the cost of the following:

- Airline lounge membership joining fee
- Airline membership annual renewal fee

These membership fees are "tax free" when provided to an employee as part of a salary packaging arrangement.

**Novated Leasing of Vehicles**

Novated car leases for new or used cars may be packaged by employees. In entering into a novated lease, Council and an employee enter into an agreement with the financier whereby Council ensures repayments under the finance lease are made by deducting the repayment amount from the employee's salary. The employee owns the vehicle and has the right to take the vehicle with them should they leave employment of the City, with full responsibility for the vehicle passed on to the employee.

**Remote Area Housing Rent***Rent - Employer Provided Housing*

Council, at its discretion may agree to provide eligible employees with a Council owned or leased rental property as part of their package, and the employee may apply to salary package 100% of the rental value tax free.

*Rent - Private Rentals*

Employees renting privately (i.e. employees who have a rental agreement with a landlord or agency), within a Remote Area can apply to salary package 50% of their rental value tax free.

**Remote Area Housing Mortgage Interest**

Subject to qualifying criteria, employees with a mortgage on their home which is in a Remote Area can apply to salary package their interest expenses on the mortgage. The home must be their usual place of residence.

The employee receives reimbursement of 100% of their interest expenses paid. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

### Remote Area Domestic Energy

Subject to qualifying criteria, employees who package remote area housing benefits can apply to salary package 100% of the value of the cost of their residential electricity and gas expenses. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package energy costs paid during the period of their employment with the City of Busselton and for the period that they are / have been claiming a remote housing benefit.

### CONCLUSION

It is recommended that Council continue to support the Salary Packaging Policy in its revised form, with salary packaging a useful staff attraction and retention tool. An OPP has been developed to maintain the operational parameters that exist within the current policy.

### OPTIONS

The Council may not agree with the revisions to the policy and may seek for the policy to be re-endorsed in its current format.

### TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The new policy will be effective as of its adoption by Council.

### Council Decision / Committee Recommendation and Officer Recommendation

**C1703/039** Moved Councillor J McCallum, seconded Councillor T Best

That the revised Salary Packaging Policy as shown in Attachment A be adopted.

<b>042</b>	<b>Salary Packaging</b>	<b>Version 3</b>
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#### 1. PURPOSE

The objective of this policy is to provide the guiding document for the provision of various salary packaging options to eligible City of Busselton employees. Salary Packaging is primarily an attraction and retention tool and hence this policy aims to increase staff attraction and retention.

#### 2. SCOPE

This policy applies to all full time, part time and fixed term employees (longer than 12 months duration), subject to meeting specific eligibility criteria relevant to the packaged benefit sought.

This Policy provides for the salary packaging of an Allowable Benefit as defined.

#### Definitions

##### Allowable Benefit

The following range of Salary Packaging Benefits:

- Work Related Items – i.e. laptops, mobile phones
- Leisure Centre and Child Care Fees (at City operated premises only)
- Novated Leasing of Vehicles
- Remote Area Housing Benefit
  - Rental
  - Mortgage Interest
- Remote Area Domestic Energy

	<ul style="list-style-type: none"> <li>○ Airline Lounge Membership</li> </ul>
<b>ATO</b>	Australian Taxation Office
<b>Base Cash Salary</b>	Remuneration in accordance with relevant workplace agreement or contract of employment paid by way of regular periodic cash payments subject to PAYG tax. This does not include superannuation guarantee contributions.
<b>Benefit</b>	Any non-cash benefit and cash payment (other than Base Cash Salary) made or expected to be made for the benefit of the employee
<b>Fringe Benefits Tax (FBT)</b>	Tax payable by the City to the Government on some categories of benefits provided to employees
<b>FBT Year</b>	1 April to 31 March each year
<b>PAYG</b>	Pay As You Go taxation
<b>Remote Area</b>	<p>An area which is one of the following:</p> <ul style="list-style-type: none"> <li>○ At least 40 kms from an urban centre with a population of 14,000 or more</li> <li>○ At least 100 kms from an urban centre with a population of 130,000 or more</li> </ul> <p>Note, not all of the City of Busselton district is classified as a Remote Area. A map showing the cut off is available in the City's Salary Packaging Guide.</p>
<b>Salary Packaging</b>	An arrangement between an employee and employer whereby the employee elects to exchange Base Cash Salary for a Benefit but for the purposes of this Policy does not include superannuation.
<b>Total Remuneration</b>	Total package value assigned to the permanently occupied position that the employee is entitled to receive under an agreement or contract of employment with the City expressed as an annual sum.

### 3.0 POLICY CONTENT

Salary Packaging will be made available to employees as a benefit in accordance with City operational practices and procedures and in accordance with ATO legislation, rulings, and any other relevant legislation, as amended from time to time, but only to the extent of an Allowable Benefit as defined in this Policy.

Salary packages will be adjusted accordingly (within an employee's agreed Total Remuneration) to account for variations in a salary packaging arrangement, including variations in an Allowable Benefit, taxation, and scheme participation.

Salary Packaging arrangements will be administered at minimal financial cost to the City and where required by the CEO, by an external Salary Packaging provider approved by the City. As part of any Salary Packaging arrangement, the cost of administering the package (if applicable) is to be met by the participating employee.

Any Fringe Benefits Tax (FBT) or other tax liability is to be met by the participating employee.

All employees entering into a Salary Packaging arrangement must enter into an agreement appropriate to the type of Benefit. All employees must ensure compliance with the agreement entered into and all organisational practices and procedures, as amended from time to time.

It is an individual employee's responsibility to monitor packaging arrangements and to be aware of and responsible for any individual consequences of participating in an arrangement relating to an Allowable Benefit. The City strongly urges employees contemplating Salary Packaging to seek

independent financial or other appropriate advice. Benefits of participation will vary according to individual circumstances and individual participation, therefore participation is a matter of individual employee decision, responsibility and risk.

### 3.1 Responsibilities:

Elected Members will:

- Adopt and review this policy on a periodic basis as required.

CEO will:

- Endorse and enforce all standards documented in this policy;
- Endorse and enforce operational Salary Packaging practices and procedures which include, but are not limited to:
  - Eligibility and participation criteria
  - Rules for application of Salary Packaging;
  - Processes and/or forms to ensure an effective, compliant scheme;
  - Information capture requirements;
  - Training requirements.
- Regularly review Salary Packaging opportunities to continuously identify opportunities for improved attraction and retention of staff.
- Establish mechanisms to monitor compliance with this policy;
- Establish processes to deal with instances of non-compliance to this policy or related operational practices and procedures.

### 3.2 Eligibility Criteria

Specific eligibility and participation criteria apply dependant on an employee's employment status at a point in time, and the Allowable Benefit provided. The City's operational practices and procedures detail criteria further to that outlined below.

#### Work Related Items

The following items, where used for **work purposes only** and not provided by the City, may be paid for from an employee's pre-tax salary:

- portable electronic devices (laptops, mobile phones and PDA's)
- protective clothing
- briefcase
- calculator
- computer software

There is a limit of one item per category per FBT year.

#### Novated Leasing of Vehicles

Novated car leases for new or used cars may be packaged by employees. A car classified as 'luxury' by the ATO cannot be salary packaged. Novated leases may not be entered into for City provided (fleet) vehicles.

In entering into a novated lease, Council and an employee will enter into an agreement with the financier whereby Council will ensure repayments under the finance lease are made by deducting the repayment amount from the employee's salary.

The employee will own the vehicle and has the right to take the vehicle with them should they leave employment of the City, with responsibility for the vehicle passed on to the employee.

#### Remote Area Housing

Eligible employees may salary package the following items under this Policy:

*Rent – Employer Provided Housing*

Council, at its discretion may agree to provide eligible employees with a Council owned or leased rental property as part of their package, and the employee may apply to salary package 100% of the rental value tax free by being paid part of their Total Remuneration as a non-taxable remote housing reimbursement. Their Base Cash Salary will be reduced accordingly.

#### *Rent – Private Rentals*

Employees renting privately (i.e. employees who have a rental agreement with a landlord or agency), within a Remote Area can apply to salary package 50% of their rental value tax free through being paid part of their Total Remuneration as a non-taxable remote housing reimbursement. Their Base Cash Salary will be reduced accordingly.

#### *Mortgage Interest*

Subject to qualifying criteria outlined in the City's operational practice and procedure, employees with a mortgage on their home which is in a Remote Area can apply to salary package their interest expenses on the mortgage. The home must be their usual place of residence.

The employee receives reimbursement of 100% of their interest expenses paid through being paid part of their Total Remuneration as a reimbursement. Their Base Cash Salary will be reduced accordingly. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package interest paid during the period of their employment with the City of Busselton and only from 1 July 2014 onwards.

#### *Remote Area Domestic Energy*

Subject to qualifying criteria outlined in the City's operational practice and procedure, employees who package remote area housing benefits can apply to salary package 100% of the value of the cost of their residential electricity and gas expenses tax free through being paid part of their Total Remuneration as a reimbursement. Their Base Cash Salary will be reduced accordingly. 50% of the reimbursement does however attract FBT, which is payable by the employee. The reimbursement is not a reportable fringe benefit and is therefore exempt from payment summary reporting.

The employee is only able to package energy costs paid during the period of their employment with the City of Busselton and for the period that they are / have been claiming a remote housing benefit.

#### Airline Lounge Membership

Employees can apply to salary package the cost of the following:

- Airline lounge membership joining fee
- Airline membership annual renewal fee

Their Base Cash Salary will be reduced accordingly. These membership fees are "tax free" when provided to an employee as part of a Salary Packaging arrangement.

Membership fees to more than one airline lounge facility are permitted.

Frequent Flyer membership fees are not eligible for salary packaging as they do not give an entitlement to use an airline lounge facility.

#### **Policy Background**

Policy Reference No. -

Owner Unit – Employee Services & Risk

Originator – Employee Services & Risk

Policy approved by – Council

Date Approved - For consideration

Date Reviewed - As required

Related Documents Salary Packaging Operational Practices, Procedures and Manuals

Salary Packaging Agreement  
City of Busselton Enterprise Agreement 2014


**History**

<b>Council Resolution</b>	<b>Date</b>	<b>Information</b>
		Date of implementation Version 1
		Amended Policy to include Remote Area Mortgage Interest, Remote Area Domestic Energy, Airline Lounge Membership Version 2
		Amended Policy to streamline and simplify Version 3

**CARRIED 9/0**

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10.5 Policy and Legislation Committee - 16/02/2017 - REVIEW OF POLICY 018 - CUSTOMER SERVICE

<b>SUBJECT INDEX:</b>	Customer Service
<b>STRATEGIC OBJECTIVE:</b>	An organisation that is managed effectively and achieves positive outcomes for the community.
<b>BUSINESS UNIT:</b>	Information Services
<b>ACTIVITY UNIT:</b>	Customer Service
<b>REPORTING OFFICER:</b>	Manager, Information Services - Hendrik Boshoff
<b>AUTHORISING OFFICER:</b>	Director, Finance and Corporate Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Revised Policy 018 - Customer Service showing tracked changes 

**This item was considered by the Policy and Legislation Committee at its meeting on 16 February 2017, the recommendations from which have been included in this report.**

### **PRÉCIS**

As part of the Council's ongoing policy review process the Customer Service Policy – Policy 018 is presented for review and updating to the current policy format.

### **BACKGROUND**

The Policy and Legislation Committee has endorsed an ongoing policy review process, whereby all policies of the Council will be reviewed, with the aim of determining the ongoing applicability of the policies, along with standardisation and reduction.

Council adopted the policy 12 May 2010 and not been reviewed since. This report documents the review of the policy, finding it only requires minor updates to bring the policy up to current standards.

### **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 recommendation of a Committee it has established in accordance with Section 5.8 of the Act

### **RELEVANT PLANS AND POLICIES**

This report proposes updates of Council policy 018 Customer Service

### **FINANCIAL IMPLICATIONS**

Nil

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

Nil



## **STRATEGIC COMMUNITY OBJECTIVES**

The ongoing policy review process is part of the City's governance systems which ensure responsible, ethical and accountable decision-making.

As the policy provides guidance for Council and the City about customer service expectations, the policy aligns with Council's Strategic Priority Key Goal Area 6:

“Open and Collaborative Leadership”

and more specifically with the Community Objective 6.3:

“An organisation that is managed effectively and achieves positive outcomes for the community”.

## **RISK ASSESSMENT**

Not required for this review of a Council policy.

## **CONSULTATION**

During the process of the first stage of the policy review, consideration was given to the policy to determine whether there was a need to invite submissions on any proposed changes to policies. This policy review is not considered to require any public consultation.

## **OFFICER COMMENT**

This report presents the review of the Customer Service Policy. The policy has provided consistent guidance to the Council and the City to meet their service provision obligations to the community, its residents and stakeholders.

The Customer Service Policy has been reviewed and officers found the policy is working well for the City's current needs. The only update required is replacing the word Shire to City in numerous places to bring the policy into alignment with the City's current name.

## **CONCLUSION**

No substantial changes are recommended. The operation of the policy has been examined in detail to ensure no other changes are required. It is the considered view of officers that the policy included in this report has been operating efficiently and effectively since it was adopted by the Policy and Legislation Committee and the Council

## **OPTIONS**

The Council could choose not to change the policy or to make additional changes to the policy.

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

The policy amendments will be effective immediately upon adoption by the Council

**Council Decision / Committee Recommendation and Officer Recommendation****C1703/040**

Moved Councillor J McCallum, seconded Councillor T Best

That the revised Council Policy 018 – Customer Service as shown in Attachment A be adopted:

<b>018</b>	<b>Customer Service</b>	<b>V1 Current</b>
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**STATEMENT**

The Council recognises and acknowledges the importance of providing excellence in customer services to the community, its residents and stakeholders.

**PURPOSE / RATIONALE**

The intent of this policy is to provide the guiding document for the Council and the City to meet their service provision obligations to the community, its residents and stakeholders.

The development of this policy has taken into account the key factors impacting on customer service provision including, but not limited to, customer expectations, existing policy and legislation, identified risks and endorsed service delivery models.

**SCOPE**

This Policy applies to all Councillors, Employees, Apprentices, Trainees and Contractors of the City of Busselton.

**DEFINITIONS**

**Customer** is defined as any person, external and internal to this organisation, who approaches Councillors, Employees, Apprentices, Trainees and Contractors of the City of Busselton with a request for information or services.

**Customer Advocacy** is defined as an approach to customer service that focuses on what is best for the customer. Customer Advocates are facilitators between the customers and the organisation.

**Customer Service** is defined as the direct provision of information or services to customers. This includes assisting our customers to identify others within our community that may be able to meet the needs of our citizens.

**City of Busselton Customer Service Charter** is a document that details the City of Busselton's commitment to delivering excellence in customer service to the community. This document clearly states the organisation's mission as well as customer service deliverables established by the Council. This document is referred to here after as the Charter.

**POLICY CONTENT**

The City of Busselton regards the provision of excellent customer services as a core strategic responsibility. In development of this policy, the Council has considered community feedback and expectations, external drivers, relevant constraints and organisational priorities. In addition, this policy takes into account the existing City of Busselton Code of Conduct (037/1 V6), which broadly outlines responsible behavior for all Councillors and City Officers. This policy applies directly to the delivery of services documented in the City of Busselton Customer Service Charter and remains valid regardless of future reviews and changes to that document. This policy is to ensure that everyone within the organisation understands the duties and responsibilities applicable at each level.

The City of Busselton Customer Service Policy is our commitment to the community to:

- Act with integrity, timeliness, efficiency and economy;
- Be open, available, accountable and transparent in our decision making;
- Treat others honestly, respectfully, fairly and in a timely manner;
- Provide accessible, consistent, accurate and relevant information and;

- Invite and be informed by community requests, suggestions and feedback.

### **Responsibility**

Elected Members shall:

- Ensure guidelines for customer service delivery as stated in this Policy and the Charter are current and relevant;
- Review this Policy and the Charter on a periodic basis as required by changing community needs;
- Identify performance indicators for expected customer service outcomes, including expected levels of compliance and reporting periods;
- Support CEO and Executives in the provision of excellence in customer service;
- Regularly review, with the CEO, performance against agreed standards to continuously identify opportunities for improvement.

CEO and Executives shall:

- Endorse and support all standards documented in this Policy and the Charter;
- Contribute to the regular periodic review of this Policy and the Charter by:
  - Engaging in regular, community consultation to ensure current and future customers' needs and requirements are reflected in organisational processes, systems and structures;
  - Identifying opportunities for improvements to service delivery;
- Support Managers and other staff in the provision of excellence in customer service;
- Establish mechanisms to monitor compliance with this Policy and the Charter across all areas of responsibility;
- Establish processes to deal with failure to meet endorsed standards;
- Report to the Council on performance indicators for customer service delivery.

Management shall:

- Optimize and support service delivery mechanisms to comply with this Policy and the Charter;
- Ensure staff under direct and indirect supervision are aware of and are following guidelines detailed in this Policy and the charter;
- Ensure provision of ongoing training to all areas of the organisation to further develop skills relevant to customer service provision;
- Implement established procedures to deal with failure to meet endorsed standards of service delivery;
- Report to CEO and Executives on performance indicators for customer service.

Employees, Contractors, Apprentices and Trainees shall:

- Comply with this Policy and the Charter
- Actively support others in compliance with this Policy and the Charter
- Undertake training and performance management as required to maintain excellence in customer service.
- Report to Managers as required on performance indicators for customer service.

Customer Focus Staff shall additionally:

- Undertake Customer Advocacy through the direct provision of complaint, dispute and grievance support as required by members of the public and within guidelines provided in this Policy and the Charter and the Code of Conduct;
- Undertake support across the organisation in the form of coaching and training to ensure customer service expectations are being met;

- Seek and report on customer feed back, positive and negative, during the course of customer interaction.

**Policy Background**

Policy Reference No. - 018

Owner Unit – Customer Service

Originator – Customer Service Coordinator

Policy approved by – Council

Date Approved - 12 May, 2010




**History**

<b>Council Resolution</b>	<b>Date</b>	<b>Information</b>
C1005/150	12 May, 2010	Date of implementation Version 1

**CARRIED 9/0  
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## **15. CHIEF EXECUTIVE OFFICER'S REPORT**

### **15.1 COUNCILLORS' INFORMATION BULLETIN**

<b>SUBJECT INDEX:</b>	Councillors' Information
<b>STRATEGIC OBJECTIVE:</b>	An organisation that is managed effectively and achieves positive outcomes for the community.
<b>BUSINESS UNIT:</b>	Executive Services
<b>ACTIVITY UNIT:</b>	Governance Services
<b>REPORTING OFFICER:</b>	Reporting Officers - Various
<b>AUTHORISING OFFICER:</b>	Chief Executive Officer - Mike Archer
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	<p>Attachment A Planning Applications Received 1 February - 15 February </p> <p>Attachment B Planning Applications Determined 1 February - 15 February </p> <p>Attachment C Meelup Regional Park Management Committee Informal Meeting Minutes - 30 January 2017 </p> <p>Attachment D Australian Local Government Association - Correspondence </p> <p>Attachment E Minister for Local Government - Regional Subsidiaries Regulation 2017 </p>

### **PRÉCIS**

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

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

### **INFORMATION BULLETIN**

#### **15.1.1 Planning and Development Statistics**

Attachment A is a report detailing all Planning Applications received by the City between 1 February, 2017 and 15 February, 2017. 46 formal applications were received during this period.

Attachment B is a report detailing all Planning Applications determined by the City between 1 February, 2017 and 15 February, 2017. A total of 30 applications (including subdivision referrals) were determined by the City during this period with 29 approved / supported and 1 refused / not supported.

#### **15.1.2 Current Active Tenders**

### **2017 TENDERS**

#### **RFT01/17 KERBSIDE RECYCLING SERVICES**

The City invited tenders for the collection of material from yellow top recycling bins and related services within the City of Busselton. The tender was advertised on 28 January 2017, with a closing date of 10 March 2017. The value of the contract will exceed the CEO's delegated authority.

**RFT02/17 KING STREET BEACH CAR PARK – SEAWALL REFURBISHMENT**

The City of Busselton invited tenders for the upgrade of the geotextile sand containers seawall at the King Street Beach Car Park. The tender was advertised on 18 February 2017, with a closing date of 15 March 2017. The value of the contract will not exceed the CEO's delegated authority.

**15.1.3 Meelup Regional Park Management Committee**

The minutes from the Meelup Regional Park Management Committee informal meeting for 30 January 2017 are available to view at Attachment C.

**15.1.4 Australian Local Government Association**

Correspondence has been received from ALGA's new President, Mayor David O'Loughlin and is available to view at Attachment D.

**15.1.5 Minister for Local Government; Community Services; Seniors and Volunteering; Youth**

Correspondence has been received from the Minister for Local Government and is available to view at Attachment E.

**Council Decision and Officer Recommendation**

**C1703/041** Moved Councillor J McCallum, seconded Councillor T Best

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

- 15.1.1 Planning and Development Statistics
- 15.1.2 Current Active Tenders
- 15.1.3 Meelup Regional Park Management Committee
- 15.1.4 Australian Local Government Association
- 15.1.5 Minister for Local Government; Community Services; Seniors and Volunteering; Youth


**CARRIED 9/0**

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## ITEMS CONSIDERED BY SEPARATE RESOLUTION

At this juncture, in accordance with Clause 5.6 (3)(a) & (b) of the Standing Orders, those items requiring an Absolute Majority or in which Councillors had declared Financial, Proximity or Impartiality Interests were considered.

### 10.1 Policy and Legislation Committee - 16/02/2017 - REVIEW OF PLANNING DELEGATIONS

<b>SUBJECT INDEX:</b>	Authorised Delegation of Power / Authority
<b>STRATEGIC OBJECTIVE:</b>	Governance systems that deliver responsible, ethical and accountable decision-making.
<b>BUSINESS UNIT:</b>	Planning and Development Services
<b>ACTIVITY UNIT:</b>	Statutory Planning
<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>	Absolute Majority
<b>ATTACHMENTS:</b>	Attachment A Existing Delegations 

**This item was considered by the Policy and Legislation Committee at its meeting on 16 February 2017, the recommendations from which have been included in this report.**

#### **PRÉCIS**

The Council is asked to consider the outcomes of a review of planning delegations. Effective planning delegations, the intent and effect of which have remained broadly stable for at least the last five years, are a critical element in ensuring the efficient and effective operation of the City's planning service.

With the aim of presenting the delegations in a more user friendly and intuitive way, some changes to the format of the delegations are proposed. Specific changes to clarify and align 'call-in' and 'referral' provisions are also proposed. Also proposed are changes to clearly set out that development of policy instruments (local planning policies and heritage instruments) are not delegated, as well as changes to reflect the reporting and briefing mechanisms which currently support the delegations, but which are not currently specifically mentioned in the actual delegations.

#### **BACKGROUND**

At its ordinary meeting of 23 September 2015, the Council adopted new planning delegations, which are the planning delegations currently in effect. The Council decision at that time was necessitated by Gazettal of the *Planning and Development (Local Planning Scheme) Regulations 2015* ('the Regulations'), the result of which was a new head of power for most planning and planning-related delegations (the head of power was now set out in the Regulations, rather than in the City's own town planning scheme, as had previously been the case). At that time, however, there was not a substantive review of the delegations, in terms of their practical effect and intent; rather, the Council adopted a new set of delegations, the practical effect and intent of which was essentially unchanged relative to what had existed previously. A copy of the current delegations is provided at **Attachment A**.

Similarly, around 12 months earlier, on 24 September 2014, the Council had also adopted a new set of planning delegations, reflecting the then impending Gazettal of the City's new town planning scheme (Local Planning Scheme 21); that had also created a new head of power for most planning delegations (i.e. the then new, now current, scheme, Scheme 21, rather than the previous scheme, Scheme 20). Again, at that time, though, there was not a substantive review of the delegations, and

what was adopted, in terms of practical effect and intent, was essentially unchanged from what had existed previously.

There had, however, been minor changes made to the planning delegations from time to time in the preceding years, as well as consideration of the planning delegations more generally as part of a broader review of delegations, subject of Council consideration in June 2011. At that time, no significant changes were made by the Council to the format, effect or intent of the planning delegations.

It should be noted that the planning legislation does not require the regular, periodic review of planning delegations, as is the case with delegations pursuant to the *Local Government Act 1995*, wherein S5.46(2) requires a review at least once every financial year. It is nevertheless seen as prudent to undertake a review of the planning and planning-related delegations from time to time to ensure their continued currency, workability and appropriateness, from a Council perspective. This report has been prepared and presented with that in mind. There have also been some changes in practice and context within the operations of the City administration itself, in terms of the working relationship between officers and Councillors and in the external environment, with respect to planning and planning-related matters since 2011; and consideration of the delegations in light of those changes is seen as appropriate.

Key changes since around the time of the 2011 review, other than the two changes to heads of power already described above, have been –

- The introduction of Development Assessment Panels (in the City's case, the South West Joint Development Assessment Panel – 'JDAP') by the State pursuant to the *Planning and Development (Development Assessment Panels) Regulations 2011*. The principal effect of that has been that some planning decisions that might otherwise have been made under delegated authority have instead been made by the JDAP – including by the two Councillor representatives on the JDAP (with the JDAP consisting of two Councillors and three independent representatives, appointed by the Minister) – and to a lesser degree that some decisions that might otherwise have been made by the Council have instead been made by the JDAP.
- The introduction of 'planning updates', generally on a monthly basis, as part of the informal briefing sessions with Councillors scheduled most Wednesday afternoons. Those updates have allowed officers to bring planning matters of potential interest to Councillors' attention, address matters raised by Councillors themselves, allow officers to indicate to Councillors the envisaged course of action with respect to various planning matters, and in particular to allow Councillors to identify matters that they would like to see brought to the Council for determination. The effect of that has been that some matters that would otherwise be determined under delegation are instead brought to the Council for determination. There are also instances, however, where a briefing on a matter satisfactorily addresses questions or concerns that Councillors may have, which at some times in the past may instead have been brought to the Council for determination. Most matters that are brought to the Council for determination are done so because it is identified that, because of the nature of the issues requiring consideration and/or the level of community interest, it is appropriate that the decision be made by the Council, rather than by officers.

It should be noted that, outside of the formal Council meeting process, the City's planning delegations outline mechanisms for 'referral' of matters to Councillors and/or for an ability for Councillors to 'call-in' matters, as follows –

- An *ability* for Councillors to call-in an application for development approval, with the current provisions allowing the Mayor, either independently or on the basis of a request



from another Councillor (or Councillors), to make a request to the CEO that a matter be brought to the Council for determination.

- A *requirement* that any application for 'reconsideration' of a delegated decision on an application for development approval not be determined under delegated authority unless officers have first re-assessed the application (including in light of any changes to the proposal and/or new information). Officers then provide a memorandum to Councillors setting out the officer assessment of the matter and the proposed direction (i.e. support the reconsideration in full, support the reconsideration in part, or not support the reconsideration at all). Councillors are then provided seven days in which to ask any further questions about the matter and/or request that the matter be brought to the Council for determination.
- An *ability* for officers to refer a draft structure plan (formerly development guide plan) or local development plan (formerly detailed area plan or detailed local area plan) to Councillors prior to the adoption of the draft plan as a 'draft for consultation'. Where this occurs, a report on the draft plan is prepared and referred to Councillors. Councillors are then provided 14 days in which to ask any further questions about the matter and/or request that the matter be brought to the Council for determination.
- A *requirement* for officers to refer a draft structure plan or local development plan to Councillors prior to the forwarding to the WAPC of a recommendation regarding the final adoption of the draft plan. Where this occurs, a report on the draft plan is prepared and referred to Councillors. Councillors are then provided 14 days in which to ask any further questions about the matter and/or request that the matter be brought to the Council for determination.

It should be noted that the call-in provisions allow Councillors to 'request' that a matter be brought to the Council for determination, but do not 'require' that occur. The reason for that is a delegation that 'required' a matter to be brought to the Council on the basis of a request from one (or more) Councillors would essentially constitute the withdrawal of a delegation by one (or more) Councillors, outside of a formal Council meeting. The only way that the Council can withdraw (or grant) a delegation, however, is via an absolute majority decision, in a formal Council meeting. Even if a delegation exists, though, officers can decide to instead to refer a matter to the Council for consideration.

It should be noted that whilst, on occasion, officers have sought to provide further information with the aim, in part, that a request be 'withdrawn', officers have never, at least within the last 4-5 years, not agreed to a request that a matter be brought to the Council for determination (where that request has been made in accordance with the protocol set out in the delegations at that particular time). Provided that an application is actually ready to be determined at the point (or just after the point) that the call-in provision is triggered, it would typically be 3-4 weeks before an application could be formally considered by the Council. Typically, that would be 1-4 weeks longer than would be required to make a decision under delegation.

It should be noted that Councillors always have the ability to use a 'notice-of-motion' to require that a particular matter be brought to the Council, if, when such a motion is put, it is supported by the Council as a whole (by absolute majority). There are a number of reasons, however, why reliance on that alone is not appropriate, principally related to timeframes. Clause 5.5 (2) of the City's *Standing Orders Local Law* requires that a Councillor provide a minimum of 21 days' notice before a notice of motion can be debated at a Council meeting. If a notice of motion is successful in requiring that a matter be brought to the Council for determination, officers would then have to prepare and present a report to a subsequent Council meeting. Given the lead times required, it would then be 2-5 weeks before the application could actually be considered by the Council (and potentially longer during December/January, or other times when there are breaks in the normal, twice monthly, Council meeting schedule). It would also often be difficult for the debate, if there was significant debate, to

not become a proxy debate about the merits of the matter, rather than being about the decision making process.

Determination of an application called-in via the notice-of-motion process would therefore typically take 5-8 weeks, rather than the 3-4 weeks associated with the existing call-in provisions. Given that, it would generally be better for officers to simply present the application to the Council for consideration at the next available opportunity, more often than not rendering the notice-of-motion redundant, and ending up with an ultimate outcome more or less the same as that achieved via a more flexible call-in provision of the kind that currently exists.

In addition to the mechanisms outlined above that allow or require Councillors to be informed and updated about planning matters, or to exercise call-in provisions, the following regular updates are provided as part of the Councillors' Information Bulletin, which forms part of all ordinary Council meeting agendas –

- At each meeting, a report listing the applications received and determined by the City in the preceding period; and
- Generally at every second meeting (so, generally monthly), an update on planning and development related matters subject of State Administrative Tribunal (SAT) or legal proceedings.

It should also be noted that there are three important kinds of planning decisions where there is, in fact, no power of delegation and, as such, all such decisions are made by the Council itself, namely –

- Local government decisions about amendments to town planning schemes (i.e. 'amendments' or 'rezonings');
- Local government decisions relating to the adoption of planning strategies and/or planning policies; and
- Decisions to commence prosecution for non-compliance with the town planning scheme.

Also of note are the relationship of local government to the WAPC and Minister for Planning, and the respective roles of local governments, the WAPC and Minister for Planning, in relation to planning in Western Australia, notably –

- With limited exceptions related to Ministerial powers (powers which have never been exercised in relation to the City of Busselton), only the Council can commence the process of amending a town planning scheme (a decision referred to as the 'initiation' of an amendment). Subsequent to that point, though, the local government must process the amendment to the point where the local government's decision-making role generally ceases, which is the point at which the Council makes a recommendation about the amendment to the WAPC and Minister for Planning.
- In the case of applications for subdivision approval, applications are made not to the local government, but to the WAPC, which is the decision-making body, and the local government's role, in common with a range of State agencies, is important, but advisory only.
- Similarly, once a subdivision approval has been granted, usually a conditional subdivision approval, the local government's role in assessing compliance with conditions of subdivision approval is also important, but advisory only, in a legal/statutory sense.

Summary information regarding decisions on applications for development approval, including the breakdown between delegated, Council and the JDAP decisions, is included as **Attachment B**.

Unlike the reports presented to the Council in 2015 and 2014, in preparing this report officers have undertaken a substantive review of the delegations. With the aim of presenting the delegations in a

more user friendly and intuitive way, some changes to the format of the delegations are proposed. Specific changes to clarify and align 'call-in' and 'referral' provisions are also proposed. Also proposed are changes to reflect the reporting and briefing mechanisms which currently support the delegations, but which are not currently specifically mentioned in the actual delegations.

## STATUTORY ENVIRONMENT

The relevant statutory environment is set out in the -

- *Planning and Development Act 2005*
- *Planning and Development (Development Assessment Panels) Regulations 2011*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- *Local Government Act 1995*
- *City of Busselton Standing Orders Local Law 2010*

Of particular note are the thresholds for referral of applications for development approval to the JDAP (as set out in the *Planning and Development (Development Assessment Panels) Regulations 2011*), which are, in the case of everywhere in the State, other than the City of Perth, currently as follows –

- Mandatory DAP applications (i.e. those that must be determined by the JDAP) are -
  - Any development application that —*
    - *is not an excluded development application; and*
    - *is for the approval of development that has an estimated cost of \$10 million or more.*
- Optional DAP applications (i.e. those that either the applicant or the local government can refer to the JDAP for determination) are -
  - Any development application that —*
    - *is not —*
      - (i) *an excluded development application; or*
      - (ii) *a development application in respect of which the responsible authority has under regulation 19 delegated the power of determination; and*
    - *is for the approval of development that has an estimated cost of \$2 million or more and less than \$10 million.*

Note that, under regulation 19, referred to above, a local government can, by absolute majority, delegate optional DAP applications to the JDAP. That can occur either on the basis of referring certain classes or types of applications, or on the basis of referring one or more particular applications. Officers are not proposing any optional delegation to the JDAP in this report.

Note that 'excluded development application' means a development application for approval of —

- (a) *construction of —*
  - (i) *a single house and any associated carport, patio, outbuilding and incidental development;*
  - (ii) *less than 10 grouped dwellings and any associated carport, patio, outbuilding and incidental development;*
  - (iii) *less than 10 multiple dwellings and any associated carport, patio, outbuilding and incidental development;*

or

- (b) *development in an improvement scheme area (of which there are none in the City of Busselton); or*
- (c) *development by a local government or the Commission; or*

## **RELEVANT PLANS AND POLICIES**

There are no relevant plans or policies.

## **FINANCIAL IMPLICATIONS**

There are no significant financial implications of the recommendations of this report. It should be noted that any significant reduction in planning delegations, or other changes that resulted in a significant increase in the number of planning matters being brought to the Council for determination, would significantly increase the workload of the City's planning staff, and increase the effective cost and reduce the operational efficiency of that part of the City's operations.

Efficient planning (and building) assessment processes are also important to the economy of the District, with building and construction activity representing a significant proportion of the District's economy, and being a significant employer, with significant economic and employment multipliers. That is particularly the case when one considers the proportion of investment that is by people living outside the District and/or who intend to become residents of the District in future.

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

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

## **STRATEGIC COMMUNITY OBJECTIVES**

The recommendations of this report reflect Strategic Objective 6.2 of the City's *Strategic Community Plan*, which is 'Governance systems that deliver responsible, ethical and accountable decision-making'.

## **RISK ASSESSMENT**

An assessment of the risks associated with implementing the officer recommendation has been undertaken using the City's risk assessment framework. No significant risks have been identified.

## **CONSULTATION**

It was not considered necessary to undertake consultation in the preparation of this report. Research was, however, undertaken, looking at the planning delegation approaches adopted by some other local governments.

## **OFFICER COMMENT**

In the most recently completed financial year, the City determined 939 applications for development approval, as well as responding to 61 subdivision applications, receiving 49 subdivision clearance requests (for creation of 455 new lots), and assessing 19 structure plan, local development plan, developer contribution plan and/or town planning scheme amendment proposals. There have also been significant achievements in the broader strategic (town) planning area, including the making of a final recommendation to the WAPC on the City's draft Local Planning Strategy, setting the overall direction on the Strategic Land Review project and implementing/coordinating a range of other projects.

The overall level of activity is, however, substantially higher than was the case 4-5 years ago, and turnaround times for determining proposals have also generally improved over that period – but staffing levels have remained the same or, in some areas, actually decreased. That performance has only been possible because of a strong focus on the development and implementation of efficient systems, and building a positive and pro-active culture, with a ‘continuous improvement’ mindset. That change in performance is also reflective of the priority given to proactive and efficient planning assessment and, in particular, improved application turnaround times by the Council itself, reflected in CEO and organisational key performance indicators for the last 5-6 years.

Another critical factor in making that performance possible has been the current approach to planning delegations, supported by the developing and maintaining of a positive, productive working relationship between and amongst Councillors and officers – noting especially that a positive, productive working relationship does not entail universal agreement. In essence, that relationship rests on the fundamental understanding that officers, even when making delegated decisions, are acting on behalf of the Council, and that the continued maintenance of delegations requires Councillors to be confident in the soundness of the decisions being made by officers. Any significant increase the proportion of planning matters being considered by the Council would, however, as already in the ‘Financial Implications’ section of this report, significantly increase the workload of the City’s planning staff, and increase the effective cost and reduce the operational efficiency of that part of the City’s operations.

Overall, the best approach to planning delegations is seen as being through broad delegations, whilst ensuring that mechanisms exist to identify issues/matters of interest as early as possible and, for the hopefully limited number of situations where they need to be exercised, that there are appropriate call-in provisions. Rigid, formulaic or legalistic approaches to limiting or defining delegation are generally not seen as appropriate, as they may well lead to matters having to be brought to the Council where Councillors are, in fact, comfortable with the direction being taken by officers, and where there are not significant/strategic issues requiring consideration and/or the level of community interest is not especially high. That would result in: additional costs to the organization (associated with the preparation and publication of agenda reports, and the Council meeting process itself); unnecessary, additional impositions on Councillors’ time; and longer timeframes for the determination of applications, creating additional uncertainty and costs for applicants, and longer periods of uncertainty for those in the community also interested in the outcomes.

Rigid, formulaic or legalistic approaches may also result in officers not recognizing matters that, despite not triggering specific requirements for referral to the Council, are nevertheless significant/strategic matters and/or which are matters of significant community interest – and which should, at minimum, be brought to Councillors’ attention. The thresholds for referral of applications to the Development Assessment Panels are an example of where rigid/formulaic/legalistic approaches do result in matters being referred ‘up’ (to the JDAP) which are not especially difficult or important. Whilst that approach is probably necessary in the context of the Development Assessment Panels (to the extent that one accepts their necessity in general), it is not necessary with respect to identification of matters to be referred ‘up’ to Council, where more flexible and interactive approaches can be employed, as has now been the case, with considerable success, for a number of years.

Given the above, whilst officers are recommending some reformatting of the delegations and some detailed changes, officers are not proposing any significant change in terms of the overall effect or intent of the planning delegations. The proposed reformatting is with the aim of presenting the delegations in a more user friendly and intuitive way, fostering a better and more consistent understanding of the planning delegation and decision-making processes more generally (amongst Councillors, officers, applicants and the community in general). In addition, there is an attempt to be more descriptive and direct in setting out how the decision-making processes actually work. That includes inserting references to the reporting and briefing mechanisms described in the ‘Background’ section of this report, which are important parts of the processes (and a critical part of developing

and maintaining a positive, productive working relationship between and amongst Councillors and officers), but which are not actually mentioned in the delegations currently.

In addition to the proposed changes described above, some detailed changes to the substance of the delegations are also proposed. The changes proposed are related to the call-in provisions, and the provisions that require or allow referral of certain proposals to Councillors (via a report/memo) for some specified period before a delegated decision can be made – during which period, Councillors can exercise the call-in provision. It is proposed, in part reflecting a general discussion item at a Policy & Legislation Committee meeting, that the call-in and referral provisions are aligned to be consistent across all of the relevant processes, as follows –

- Establishing that a call-in request must can be made by any two Councillors. The call-in provisions vary somewhat at present, with one only allowing the Mayor to make a request, and others allowing a request to be made by any individual Councillor. The reason for this proposed change is to both standardize the arrangements across the different processes, as well as ensuring that, if a matter is brought to the Council at Councillors' request, there is interest in the matter from more than one Councillor.
- Establishing that, where matters are specifically required to be referred to Councillors before a delegated decision can be made, that Councillors will always be given 14 days in which to respond. At present the timeframe is seven days for applications for reconsideration of a delegated decision on an application for development approval, and 14 days for a draft structure plan or local development plan. The reason for this change is again to standardize the arrangements across the different processes, but also to recognize that, given other workload and commitments, a 14 day timeframe significantly reduces the chance that a Councillor may not, within the timeframe allowed, be able to review the material provided by officers, ask for (and receive) further information or clarification if required, and then seek the support of a fellow Councillor if they wish to make a call-in request.

Further changes to the call-in and referral provisions are also proposed, as follows –

- Clarifying that, even though it is not possible to submit an application to amend or renew an application that has been refused, and therefore not possible to 'reconsider' such an application, that where a new application, which is substantially the same as an earlier application refused under delegation, that such an application shall be treated in the same as a reconsideration application related to reconsideration of conditions of approval, and not determined under delegated authority without the matter being referred to Councillors.
- Clarifying that, because of changes to the nature of the decision now being made by a local government prior to advertising a draft structure plan or local development plan, that such draft plans shall generally not be referred to Councillors prior to the making of a delegated decision. Councillors should note that the decision made at that stage of the process is now subject, in a statutory sense, of some fairly tight timeframes (the decision must be within 28 days for a draft structure plan and 14 days for a draft local development plan) and is essentially about assessing whether relevant supporting information has been provided, not assessing the planning merits of the proposal. Note that, to date, most such applications have been preceded by significant pre-application contact between the applicants and City officers, and most applicants would prefer not to have proposals advertised where there is a strong likelihood that the local government will recommend significant changes post-advertising, possibly resulting in the WAPC requiring the proposal to be re-advertised.

Under the current delegations, it is arguable that powers to adopt or amend local planning policies and/or amend the local heritage list can be made under delegation. That is not seen as appropriate and the proposed delegations are clear in not delegating those kinds of decisions.

The proposed new delegations are set out in the Officer Recommendation.

## CONCLUSION

The proposed new planning delegations are considered to provide for an appropriate level of delegation, ensuring the continued efficient operation of the City's planning service, whilst also ensuring that matters of strategic importance and/or significant community interest are identified and brought to the Council for determination where appropriate. The proposed new delegations are also considered to be set out in a more user friendly and intuitive way, fostering a better and more consistent understanding of the planning delegation and decision-making processes more generally.

## OPTIONS

The Council could decide to retain the existing delegations in unchanged form and/or make other changes to the delegations.

## TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Implementation of the officer recommendation would involve the drafting and establishing of appropriate sub-delegations from the CEO to other City staff as necessary, with that process to be complete within one month. Because of the need to establish sub-delegations before existing sub-delegations fall away, it is recommended that the new delegations only come into effect after one month, with the existing delegations remaining in place during that time.

### Council Decision and Officer Recommendation

**C1703/042**

Moved Councillor G Bleechmore, seconded Councillor J McCallum

**ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

That the Council, effective from 8 April 2017 –

1. Discontinue existing delegation reference PDR1; and
2. Establish new delegation reference PDR1, as follows –

### INSTRUMENT OF DELEGATION

<b>Del Ref No</b>	<b>Act Ref</b>	<b>Delegate</b>	<b>Delegation Subject</b>
<b>PDR 1</b>	s.162 Planning and Development Act 2005 cl. 82 Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 <i>Deemed Provisions for local planning schemes</i>	Chief Executive Officer	Development Control

### Delegator

Council.

### Power/Duty

To undertake the powers and duties of the local government able to delegated under cl. 82 of the *Planning and Development (Local Planning Schemes) Regulations 2015, Schedule 2 Deemed Provisions for local planning schemes*, subject to the conditions set out below.

## **Conditions**

*Note: In addition to the conditions set out below, some decisions on applications for development approval cannot be made by the City by virtue of the Planning and Development (Development Assessment Panels) Regulations 2011.*

### **1. 'Call-in' provisions**

Any two or more Councillors may consider an application or proposal to be of strategic significance and/or high community interest and *request* the CEO, in writing, to present the application or proposal to the Council for consideration. If the request is supported, the application shall be presented to the first practicable Council meeting for consideration.

*Note: Any Councillor may also submit a notice-of-motion in relation to the withdrawal of delegation in relation to a particular application, but it would generally be expected that they would first seek to exercise the call-in provision outlined above.*

### **2. Reconsideration of applications for development approval**

Prior to the determination of an application for reconsideration of an application for development approval (other than where a reconsideration is occurring pursuant to section 31 of the *State Administrative Tribunal Act 2004* – see below), the CEO shall ensure that a copy of the reconsideration request, together with a report assessing the application, is circulated to all Councillors, giving a period of not less than 14 days before a delegated decision is made.

This condition relates to applications to amend or renew an approval where reconsideration of conditions is being requested, and also to new applications which are substantially the same as an earlier application refused under delegation.

### **3. Structure Plans, Activity Centre Plans, Local Development Plans, Developer Contribution Plans**

Prior to making a recommendation to the Western Australian Planning Commission regarding adoption or amendment of a Structure Plan, Activity Centre Plan and/or Local Development Plan, the CEO shall ensure that a copy of the respective plan, together with an report, setting out and explaining the recommendation proposed to be made under delegation, is circulated to all Councillors, giving a period of not less than 14 days before a delegated decision is made.

These delegations do not extend to the making of recommendations to the Western Australian Planning Commission regarding adoption or amendment of Developer Contribution Plans.

### **4. Local Planning Policies, Local Heritage List, Heritage Precincts**

Decisions relating to adoption, revocation or amendment of Local Planning Policies, the Local Heritage List and/or Heritage Precincts are not delegated.

### **5. Applications for review by the State Administrative Tribunal (SAT)**

Where the original decision was made under delegation, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* may be made under delegation.

Where the original decision was made by the Council, a reconsideration decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* shall be presented to the Council for consideration, unless officers have briefed Councillors and Councillors have indicated a general willingness to allow the decision to be made under delegation, in which case a decision may be made under delegation, provided that the reconsideration provisions set out at Condition 2 above have been met before the decision is made.

### **6. Briefing and reporting**

Generally on a monthly basis (as agreed/determined by the Mayor and CEO), officers shall provide Councillors with an informal briefing on planning matters of strategic significance and/or high community interest, and on issues raised by Councillors.



As part of the agenda for each ordinary Council meeting, a summary of applications received and determined between the closing date of the previous summary and a date as close as practicable to the publication date of the agenda, shall be presented to Councillors as part of the 'Councillors Information Bulletin'.

Generally on a monthly basis, and generally as part of the agenda for every second ordinary Council meeting in any given month, a summary and update of planning and development-related State Administrative Tribunal matters involving the City shall be presented to Councillors as part of the 'Councillors Information Bulletin'.

**Verification**

Council Resolution C1703/042

**Review Requirements**






At Council's discretion as necessary (no statutory requirement).

**Review Dates**

Annual

**CARRIED 9/0  
BY ABSOLUTE MAJORITY**

10.6 Policy and Legislation Committee - 16/02/2017 - REVIEW OF LEGAL REPRESENTATION - COSTS INDEMNIFICATION POLICY AND ASSOCIATED INSTRUMENT OF DELEGATION

<b>SUBJECT INDEX:</b>	Governance: Committee Meetings
<b>STRATEGIC OBJECTIVE:</b>	Governance systems that deliver responsible, ethical and accountable decision-making.
<b>BUSINESS UNIT:</b>	Governance Services
<b>ACTIVITY UNIT:</b>	Governance
<b>REPORTING OFFICER:</b>	Councillor Support Officer - Lisa Haste
<b>AUTHORISING OFFICER:</b>	Director, Finance and Corporate Services - Cliff Frewing
<b>VOTING REQUIREMENT:</b>	Absolute Majority
<b>ATTACHMENTS:</b>	Attachment A Current Legal Representation Costs Indemnification Policy 
	Attachment B Marked up version of Legal Representation Costs Indemnification Policy 
	Attachment C Local Government Guideline Number 14 
	Attachment D Current Instrument of Delegation 
	Attachment E Marked up version of Instrument of Delegation 

**This item was considered by the Policy and Legislation Committee at its meeting on 16 February 2017, the recommendations from which have been included in this report.**

## PRÉCIS

As part of the Council's ongoing policy review, the policy relating to Legal Representation PO85 – Costs Indemnification has been reviewed. The recommended policy is in accordance with the model policy in the Department's guideline.

In addition, it is proposed to amend the associated Council delegation, Delegation 5A, but there is no change to the intent of the delegation.

## BACKGROUND

The Policy and Legislation Committee has endorsed an ongoing policy review process, whereby all policies of the Council will be reviewed, with the aim of determining the ongoing applicability of the policies, along with standardisation and reduction.

There is a legislative requirement to review Delegations on an annual basis.

## 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 recommendation of a Committee it has established in accordance with Section 5.8 of the Act.

## RELEVANT PLANS AND POLICIES

This report proposes the adoption of a Council policy to replace an existing policy.

## FINANCIAL IMPLICATIONS

Nil.

**Long-term Financial Plan Implications**

Nil.

**STRATEGIC COMMUNITY OBJECTIVES**

Sound policy development and review processes contribute to a responsible and accountable Local Government in accordance with the City's Strategic Plan.

**RISK ASSESSMENT**

If the City does not have this Policy in place, then the employees and elected members are not provided with appropriate legal cover, and it may also require Special Council meetings to be called to consider applications.

**CONSULTATION**

As a policy with an internal focus, this policy is not considered to require any public consultation.

**OFFICER COMMENT**

As identified in the Department's guideline on this matter, it is acknowledged that there is an increased risk of legal action being taken or threatened against individual Council members or employees. The policy that has been developed as a model by the Department seeks to provide a standard set of parameters for all local governments for protection of their interests in this regard. The new policy that is proposed is not different in its intent from the existing policy, it simply fully covers all matters recommended to be in the policy by the Department.

The existing policy (Attachment A) and proposed policy (Attachment B) are appended to this report. The proposed policy modifies the existing policy so that it reflects the content of the Local Government Operations Guidelines Number 14 – Legal Representation for Council members and Employees (Attachment C).

It is also proposed as part of the consideration of this matter, that the Council updates its delegation to the CEO to deal with applications of an urgent nature. This requires an absolute majority decision of the Council. The current delegation (Attachment D) and the proposed new delegation (Attachment E) are attached to this report.

**CONCLUSION**

The intent of the new proposed policy is the same as the existing policy, however it simply covers all of the matters that the Department of Local Government have recommended be in the policy

**OPTIONS**

The Council may determine to maintain the existing policy or to revise aspects of the recommended policy, for example the monetary limit to which the CEO can provide approval.

**TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

The revised policy and delegation that is recommended would be effective immediately upon adoption by the Council.

**Council Decision and Officer Recommendation****C1703/043**

Moved Councillor J McCallum, seconded Councillor C Tarbotton

**ABSOLUTE MAJORITY DECISION OF COUNCIL REQUIRED**

That the Committee recommends to Council that it:

1. adopts the amended “Legal Representation for Council Members and Employees” Policy to replace the existing “Legal Representation – Costs Indemnification Policy”:

<b>085</b>	<b>Legal Representation for Council Members and Employees</b>	<b>V2 Current</b>
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**1.0 PURPOSE**

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions. In most situations the City of Busselton may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district.

**2.0 SCOPE**

The policy applies to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the policy.

**3.0 POLICY CONTENT****3.1 Definitions**

**approved lawyer** is to be –

- (a) a ‘certified practitioner’ under the *Professions Act 2008*
- (b) from a law firm on the City’s or WALGA’s panel of legal service providers, if relevant, unless the Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
- (c) approved in writing by the Council or the CEO under delegated authority.

**council member or employee** means a current or former Commissioner, Council member or employee of the City of Busselton.

**legal proceedings** may be civil, criminal or investigative.

**legal representation** is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are in respect of:

- (a) a matter or matters arising from the performance of the functions of the Council member or employee; and
- (b) legal proceedings involving the Council member or employee that have been, or may be, commenced.

**legal representation costs** are the costs, including fees and disbursements, properly incurred in providing legal representation.

**legal services** includes advice, representation or documentation that is provided by an approved lawyer.

**payment** by the City of Busselton of legal representation costs may be either by –

- (a) a direct payment to the approved lawyer (or the relevant firm); or
- (b) a reimbursement to the Council member or employee.

### **3.2 Payment Criteria**

There are four major criteria for determining whether the City of Busselton will pay the legal representation costs of a Council member or employee. These are –

- (a) the legal representation costs must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;
- (b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- (c) in performing his or her functions, to which the legal representation relates, the Council member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- (d) the legal representation costs do not relate to a matter that is of a personal or private nature.

### **3.3 Examples of legal representation costs that may be approved**

If the criteria in clause 3.2 of this policy are satisfied, the City may approve the payment of legal representation costs –

- (a) where proceedings are brought against a Council member or employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the Council member or employee; or
- (b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example where a council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
- (c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees.

The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

### **3.4 Application for payment**

A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Council or the CEO. The written application for payment of legal representation costs is to give details of –

- (a) the matter for which legal representation is sought;
- (b) how that matter relates to the functions of the Council member or employee making the application;
- (c) the lawyer (or law firm) who is to be asked to provide the legal representation;
- (d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
- (e) an estimated cost of the legal representation; and
- (f) why it is in the interests of the City for payment to be made.

The application is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates. As far as possible the application is to be made before commencement of the legal representation to which the application relates.

An application to the Council is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee.

### **3.5 Written Statement**

The application is to be accompanied by a signed written statement by the applicant that he or she –

- (a) has read, and understands, the terms of this Policy;
- (b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of Clause 3.11 and any other conditions to which the approval is subject; and
- (c) undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 3.11 of this policy.

### **3.6 Application for Payment**

In relation to clause 3.5 (c), when a person is to be in receipt of such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of the policy.

### **3.7 Legal representation costs – Limit**

The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application. A council member or employee may make a further application to the council in respect of the same matter.

### **3.8 Council Powers – Decision process and conditions**

The council may –

- (a) refuse;
- (b) grant; or
- (c) grant subject to conditions

an application for payment of legal representation costs.

Conditions may include, but are not restricted to, a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.

In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the City's Councilmembers' or employees' insurance policy or its equivalent.

### **3.9 Revocation and variation**

The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

The Council may, subject to natural justice principles, determine that a Council member or employee whose application has been approved has, in respect of the matter for which legal representation costs were approved –

- (a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
- (b) given false or misleading information in respect of the application

A determination under this clause may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination under this clause, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 3.11.

### **3.10 Delegation to Chief Executive Officer**

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the council, the powers of the council under clause 3.8, to a maximum of \$10,000 in respect of each application.

An application approved by the CEO is to be submitted to the next ordinary meeting of the Council.

Council may exercise any of its powers under this Policy.

### **3.11 Repayment of legal representation costs**

A Council member or employee whose legal representation costs have been paid by the City is to repay the City –

- (a) all or part of those costs – in accordance with a determination by the Council under clause 3.9;
- (b) as much of those costs as are available to be paid by way of set-off – where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.

The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

#### **Policy Background**

Policy Reference No. - 085

Owner Unit – Office of the Chief Executive

Originator – Manager, Governance Services

Policy approved by – Council

Date Approved – 27 June, 2012

Review Frequency – As required

Related Documents – N/A

#### **History**

Local Government Operational Guidelines Number 14 – modified April 2006

<b>Council Resolution</b>	<b>Date</b>	<b>Information</b>
C1206/166	27 June, 2012	Department of Local Government has republished its model policy. This version is based on that model policy Version 2
		Version 1

- b) adopts the amended delegation 5A – Legal Representation for Council Members and Employees:

#### **INSTRUMENT OF DELEGATION**

<b>Ref No</b>	<b>LG Act Ref</b>	<b>Delegate</b>	<b>Delegation Subject</b>
5A	5.42(1)(a)	Chief Executive Officer	<b>Provision of Urgent Legal Services</b>

#### **Delegator**

Council.

#### **Power/Duty**

To provide authorisation to the CEO to approve applications for urgent legal assistance in accordance with Clause 3.10 of Council policy PO85 "Legal Representation for Council members and employees" to a maximum of \$10,000.

#### *3.10 Delegation to Chief Executive Officer*

*In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, the powers of the council under Clause 3.8 to a maximum of \$10,000 in respect of each application.*

*An application approved by the CEO is to be submitted to the next ordinary meeting of Council. Council*

*may exercise any of its powers under this Policy.*

**Conditions**

The determination must be made in accordance with the provisions of the Council policy "Legal Representation for Council members and employees".

**Statutory Framework**

Council is exercising its power of delegation under Section 5.42(1)(a) of the *Local Government Act 1995*.

**Verification**

Council Resolution  
C1606/140  
Council Resolution  
C1506/161  
Council Resolution  
C1406/161  
Council Resolution  
C1306/168  
Council Resolution  
C1206/166  
Council Resolution  
C1106/199  
Council Resolution  
C1006/217  
Council Resolution  
C0906/243  
Council Resolution  
C0806/188

**Review Requirements**

In accordance with the requirements of Section 5.46(2) of the *Local Government Act 1995*, Delegations are reviewed at least once every financial year.

**Related Documents**

Legal Representation Policy – PO85

**Notes of Alterations**

7/2/2017 – Amended to be fully consistent with Department of Local Government Guideline 14  
27/06/2012 – New policy adopted.  
22/06/2011 - Update to refer to the correct section of the *Local Government Act 1995*.

**CARRIED 9/0**

**BY ABSOLUTE MAJORITY**



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

### **11.1 DEVELOPMENT APPLICATION FOR ADDITIONAL DWELLING TO FORM TWO GROUPED DWELLINGS - 50 HAMMOND ROAD, YALLINGUP**

<b>SUBJECT INDEX:</b>	Development/Planning Applications
<b>STRATEGIC OBJECTIVE:</b>	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
<b>BUSINESS UNIT:</b>	Development Services and Policy
<b>ACTIVITY UNIT:</b>	Development Services and Policy
<b>REPORTING OFFICER:</b>	Planning Officer - Justin Biggar
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Location Plan 
	Attachment B Site Plan 
	Attachment C Elevations and Floor Plan 
	Attachment D Table of Submissions 

#### **PRÉCIS**

The Council is asked to consider a development (planning) application seeking approval for an Additional Dwelling to Form Two Grouped Dwellings at 50 Hammond Road, Yallingup.

The proposal is placed before the Council due to the discretionary nature of the development and the level of community interest in the further subdivision and development of land in the Yallingup townsite generally.

The proposal has been submitted under Clause 5.3.1 of the City of Busselton Local Planning Scheme No. 21 ('the Scheme') which creates discretion to develop two dwellings on lots in the area in question that are larger than 900m<sup>2</sup>, applying a minimum site area of 450m<sup>2</sup> per dwelling.

The proposal utilizes an irregular and unusual lot boundary layout to achieve the required site area. The resulting lots are considered to lack sufficient residential amenity and it is considered that approval would be contrary to both the intent of the aforementioned clause and orderly and proper planning.

It is considered that the application is inconsistent with the relevant planning framework and is recommended for refusal.

#### **BACKGROUND**

The City has received a development application for an additional dwelling to form two grouped dwellings at 50 Hammond Road, Yallingup. A location plan is provided at Attachment A.

The parent lot is 913m<sup>2</sup> in size and zoned R10 Residential under the Scheme, where the average lot size requirement is ordinarily 1,000m<sup>2</sup>. As per clause 5.3 (Special Application of the Residential Design Codes) the site is of sufficient size to allow discretion for the approval of two grouped dwellings with a minimum lot size of 450m<sup>2</sup>.

The proposal includes the retention of the existing house with the new dwelling to be located at the rear of the parent lot. The proposed lot sizes are 462m<sup>2</sup> (existing house) and 451m<sup>2</sup> (new dwelling). The rear lot utilizes 90m<sup>2</sup> of the battle-axe access leg to achieve the required 450m<sup>2</sup>, which at 20% is the maximum portion of the lot area allowed to be encompassed by the battle-axe. A site plan is provided at Attachment B.

The new dwelling is relatively compact with a building footprint of 89.52m<sup>2</sup> and less than 40% coverage of the site area. Elevations and floor plan has been provided at Attachment C.

Due to the irregular shape of the parent lot, a number of modifications are required to the existing house to both accommodate the additional dwelling and comply with Residential Design Codes provisions. A section of balcony is required to be removed as well as the installation of privacy screening to upper storey windows.

As a discretionary development, in relation to both the land use and the works/building part of the proposed development, the application was referred to immediate neighbours and the Yallingup Residents' Association. Four submissions were received, with three objections and one neutral. Further details are provided in the Table of Submissions (Attachment D).

## **STATUTORY ENVIRONMENT**

The key statutory environment is set out in the City of Busselton Local Planning Scheme No.21 ('the Scheme'), as modified by the *Deemed Provision for Local Planning Schemes* set out in Schedule 2 of the *Planning and Development Regulations 2015* ('the Deemed Provisions').

### ***Residential Zone***

The site is located in the Residential zone. Objectives of the zone relevant to this application are as follows;

- (a) To ensure, as a primary consideration, that the amenity and character of residential areas are maintained*

Policies of the Residential zone relevant to this application are as follows;

- (a) To provide for other development (including medium density in-fill development), only where it is –*
  - (i) Compatible with the residential environment and afford services to residents at a local level*
  - (ii) Unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for detached housing*

### ***Special Application of the Residential Design Codes***

The proposal utilizes clause 5.3.1 of the Scheme, which allows for development of R10 coded 900m<sup>2</sup> lots, applying a minimum lot size of 450m<sup>2</sup> as follows (underlining added);

*5.3.1 Notwithstanding any other provision of the Scheme, the following variations and exclusions to the R-Codes apply:*

- (a) The local government may grant planning approval for the development of not more than two grouped dwellings on any lot comprising not less than 900m<sup>2</sup>, applying a minimum site area of 450m<sup>2</sup> per grouped dwelling, within any area coded R10 or greater on the Scheme map, excluding standard residential lots with direct canal frontage in the Port Geographe development area.*

In determining any application for development approval lodged pursuant to this clause, the local government must take into consideration the matters listed at clause 67 of the deemed provisions, clause 6.7 (Special Character Area) and Schedule 4 of the Scheme.

### **Special Character Area**

The site is located in the Yallingup Special Character Area. Any development applications in the locality are subject to assessment against the criteria of the Special Character Area policy, outlined in greater detail at the Relevant Plans and Policies section.

### **Schedule 4 – Special Character Area**

The site is subject to Schedule 4 of the Scheme which states that in the Yallingup Special Character Area, group housing development at R20 density (450m<sup>2</sup> lot size) may only be approved where the Council is satisfied that:

- (i) *Buildings shall have an appearance of lightweight construction and fit with the site topography which will normally require the use of stumped construction*
- (ii) *Site coverage should be no more than 40% of the lot area and where possible, remnant vegetation should be used to reduce the visual mass/bulk of dwellings;*
- (iii) *Clearing shall only be permitted within approved footprint areas and the immediate surrounds;*
- (iv) *Building style shall be reflective of and sensitive to the existing residential character through the use of prominent windows, lightweight and prominent balconies, relatively steep and multi-pitched roofs.*

### **Landscape Value Area**

The site is within a Landscape Value Area under the Scheme. The provisions of this special control area relevant to this application are as follows:

*6.4.1 The local government shall not grant planning approval for the clearing or development of any land identified within a Landscape Value area on the Scheme map, unless it has considered -*

- (a) whether the development will be compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the locality;*

### **Matters to be considered by local government**

Clause 67 of the Deemed Provisions outlines the key matters to be considered by local government when considering a development application. Those matters which are considered to be particularly relevant to this application are as follows:

- (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving....*
- (g) any local planning policy for the Scheme area....*
- (n) the amenity of the locality including the following –*
  - (i) environmental impacts of the development;*
  - (ii) the character of the locality;*
  - (iii) social impacts of the development....*
- (y) any submissions received on the application;*

## **RELEVANT PLANS AND POLICIES**

### ***Local Planning Policy 3A – Yallingup Special Character Area***

LPP 3A establishes the assessment criteria for any development within the Yallingup locality, as the area has been identified as possessing a special character worthy of preservation.

## **FINANCIAL IMPLICATIONS**

The recommendation of this report is a planning determination. There are no significant financial implications of the recommendation of this report.

## **STRATEGIC COMMUNITY OBJECTIVES**

The recommendations in this report reflect Community Objective 5.2 of the City's Strategic Community Plan 2013 – 'A City of shared, vibrant and well planning places that provide for diverse activity and strength our social connection.'

## **RISK ASSESSMENT**

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

## **CONSULTATION**

As per Clause 10.4 of the Scheme, the proposal was referred to all five adjoining landowners and the Yallingup Residents Association for a period of 21 days.

A total of four submissions were received, three objecting and one neutral (Attachment B). The main concern raised in objections was the detrimental impact of further subdivision and increased density on the special character of the Yallingup locality.

## **OFFICER COMMENT**

The City has assessed the proposal having regard to the requirements of the Scheme and the matters to be considered, in particular whether the proposal constitutes orderly and proper planning.

In determining whether this requirement is satisfied, it is necessary to consider if the resulting lots provide an appropriate level of residential amenity for future occupiers/owners.

As indicated at Attachment B, the angular arrangement of the rear lot appears to be designed merely to accommodate the required size of 450m<sup>2</sup> without clear regard being given to the needs of future residents. Where departing from the type of rectangular shape usually best suited to accommodating a dwelling, lots should still aim to achieve the benefits offered by that shape, namely maximizing private space and the amenity of the lot.

It is not considered that this has been achieved with the proposed lot shape. The arguably contrived boundary limits the ability of residents to utilize space external to the dwelling for outdoor recreation and does not provide a balanced setting between buildings and the natural landscape. Nor does the building design itself appear to support the use of this triangular shaped space.

Of particular concern is the area of open space to the east of the new dwelling. Due to the positioning of both the existing house and new dwelling, this is an area of 40m<sup>2</sup> with little to no access to northern sun. In the most likely circumstance, this area would be rendered largely unusable as outdoor space and become an area of limited utility to either dwelling.

The resulting rear lot is left with approximately 60m<sup>2</sup> of useable open space, in a density coding (R20) with a Deemed to Comply requirement of 225m<sup>2</sup> of open space under the Residential Design Codes.

Drafters of the Scheme clearly intended approval of higher densities through Clause 5.3.1 as a discretionary decision. It is worthwhile considering the broader intent of that clause, which is to accommodate higher density where it can be demonstrated to be consistent with the matters listed under clause 67 (matters to be considered). The unusual lot boundaries of the proposal are not considered to meet this test.

Clause 5.3.1 does not provide landowners the right to develop grouped dwellings on a site that meets the minimum size requirements. Rather it provides the City the discretion to grant permission for such development only where it is considered appropriate.

## **CONCLUSION**

It is considered that due to the irregular nature of the lot boundaries and the relatively low residential amenity of the resulting lots, approval of the proposal would be contrary to the objectives of the Residential zone and the interests of orderly and proper planning.

The application is therefore recommended for refusal.

## **OPTIONS**

Should the Council be minded to approve the development; the Council could determine the application is consistent with the objectives and policies of the zone in which development is proposed, and approve the proposal subject to appropriate conditions. If a Councillor is minded to support this option officers can assist in the drafting of a suitable alternative motion.

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

The applicant will be notified of the Council's decision within two weeks of a decision consistent with the officer recommendation.

## **OFFICER RECOMMENDATION**

That the Council resolve to refuse the development application for an Additional Dwelling to Form Two (2) Grouped Dwellings at Lot 25 (HSE 50) Hammond Road, Yallingup because it is inconsistent with Local Planning Scheme No. 21 for the following reasons –

1. The irregular nature of the lot boundaries would result in the creation of lots of relatively low residential amenity that do not adequately meet the needs of future residents.
2. The proposal is inconsistent with the amenity of the locality.
3. The proposal does not constitute orderly and proper planning.

Note: Officers proposed an Alternative Recommendation for Council consideration that would result in approval of Development Application DA16/0848.

**Council Decision and Alternative Officer Recommendation****C1703/044** Moved Councillor C Tarbotton, seconded Councillor T Best

That the Council resolve:

1. That application DA16/0848 submitted for Additional Dwelling to Form 2 Grouped Dwellings at Lot 25 (HSE 50) Hammond Road, is considered by the Council to be consistent with Local Planning Scheme No. 21 and the objectives and policies of the zone within which it is located.
2. That Development Approval is issued for the proposal referred to in 1. above subject to the following conditions:

**GENERAL CONDITIONS**

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the City and except as may be modified by the following conditions.
3. The development shall be restricted to a maximum of 10 metres above natural ground level.

**Prior to Commencement of Any Works Conditions:**

4. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City's Planning department and have been approved in writing:
  - 4.1 Details of on-site effluent disposal, stormwater and surface water drainage works (Advice notes 8 and 9);
  - 4.2 Details of type and colour of all external materials to be used (Advice note 10);
  - 4.3 A Landscape Plan;
  - 4.4 Notifications in the form of a section 70A notification, pursuant to the Transfer of Lands Act 1893 (as amended) is to be placed on the Certificates of Title of the subject site advising the following:

'BUSHFIRE PRONE AREA - This lot is located within a bushfire prone area as designated by an Order made by the Fire and Emergency Services Commissioner.'
5. The development hereby approved, or any works required to implement the development, shall not commence until the following contributions have been paid to the City (Advice Notes 5 and 11):
  - 5.1 A contribution of \$1,046.01 towards the Road Network Upgrading in the Dunsborough & Quindalup (Including Eagle Bay and Yallingup) precinct (Advice Note 13).
  - 5.2 A contribution of \$551.29 towards the Dual Use Path Network Upgrading in the Dunsborough & Quindalup (Including Eagle Bay and Yallingup) precinct (Advice Note 13).
  - 5.3 A contribution of \$3,076 towards community facilities in the Dunsborough & Quindalup (Including Eagle Bay and Yallingup) precinct (Advice Note 12).

**Prior to Occupation/Use of the Development Conditions:**

6. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 4 have been implemented; and, the following conditions have been complied with:
  - 6.1 A copy of the Certificate of Title with the Section 70A notification registered against it has been submitted to the City.

- 6.2 Landscaping and reticulation shall be implemented in accordance with the approved Landscape Plan and shall thereafter be maintained to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, as assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.

**On-going Conditions:**

7. The works undertaken to satisfy Conditions 3, 4 and 6 shall be subsequently maintained for the life of the development.

**ADVICE TO APPLICANT**

1. If the applicant and/or owner are aggrieved by this decision, including any conditions of approval, there is a right to lodge a request for reconsideration. The application form and information on fees payable can be found on the City's website.
2. If the applicant and/or owner are aggrieved by this decision there may also be a right of review under the provisions of Part 14 of the *Planning and Development Act 2005*. A review must be lodged with the State Administrative Tribunal, and must be lodged within 28 days of the decision being made by the City of Busselton.
3. This Decision Notice grants Development Approval to the development the subject of this application (DA16/0848). It cannot be construed as granting Development Approval for any other structure shown on the approved plans which was not specifically included in this application.
4. Please note it is the responsibility of the applicant / owner to ensure that, in relation to Condition 1, this Development Approval remains current and does not lapse. The City of Busselton does not send reminder notices in this regard.
5. Please be advised that when forwarding payment for contributions and/or bonds to the City of Busselton, whether it be in person or through the mail, you will need to include a copy of this correspondence (decision on application for Development Approval) for receipting purposes.
6. In accordance with the provisions of the *Building Act 2011*, and *Building Regulations 2012*, an application for a building permit must be submitted to, and approval granted by the City, prior to the commencement of the development hereby permitted.
7. In accordance with the requirements of the *Local Government (Uniform Local Provisions) Regulations 1996*, you are hereby notified that any vehicle access from the land to a road or other public thoroughfare must be in accordance with the City's adopted Crossover Policy and Vehicle Crossovers Technical Specification.
8. You are advised by the City's Environmental Health Department of the following:
  - 8.1 Legislation does not permit any structure to be erected above any septic tank, ATU, greywater system if that structure obstructs free access to the tanks.
9. You are advised that stormwater shall be retained on site at a rate of 1m<sup>3</sup> per 40m<sup>2</sup> of impervious area.
10. Clause 6.4.3 of the City of Busselton Local Planning Scheme No. 21 states the following:

*“external surfaces’ means the external walls and cladding (if any), external doors, external door and window frames, columns, roofs, fences and any surface of a building or work visible from the exterior of a building or work; and*

*‘prescribed materials’ means materials with dark tones or dark colouring and of low reflective quality or materials which are painted or similarly treated with dark toned or dark coloured paint or pigment of low reflective quality”*

11. In respect to Condition 5 the contribution fee is upgraded in line with the Consumer Price Index for Perth on 30 June each year. The fee applicable will be determined at the time of payment and may therefore vary from the quoted figure.
12. This payment is required as a result of the Busselton Community Facilities Contribution Policy and is calculated on the basis of \$3,076 for every additional unit approved in the Dunsborough & Quindalup (Including Eagle Bay and Yallingup) precinct. The contribution will be retained within a separate fund to be used solely for the upgrading, improving and provision of the City's community facilities consistent with a community facility plan for the precinct.
13. This payment is required as a result of the Road, Footpath and Cycle Network Upgrading Contributions Provisions Policy and is calculated on the basis of \$1,046.01 towards roads and \$551.29 towards dual use path for every additional unit approved in the Dunsborough & Quindalup (Including Eagle Bay and Yallingup) precinct. The contribution will be retained within a separate fund to be used solely for the upgrading, improving and provision of the City's Distributor Network consistent with a road and footpath upgrades plan for the precinct.

**CARRIED 7/2**

Voting:

For the motion: Councillor T Best, Councillor G Bleechmore, Mayor G Henley, Councillor C Tarbotton, Councillor P Carter, Councillor R Reekie and Councillor R Paine.

Against the motion: Councillor R Bennett and Councillor J McCallum.



Reasons for Change to Officers Recommendation:

Officers presented the Alternative Recommendation for the following key reasons -

- It appears there is no "fatal flaw" in terms of on-site effluent disposal systems being used for the development.
- The draft State sewerage policy may provide a basis for the WAPC to not approve the subdivision of the site, but would not provide a basis for the City to refuse the development (or, more precisely, that it would not provide a basis for refusal that would be robust if challenged in SAT); and
- The unusual lot layout appears to be a response to designing and planning the on-site effluent disposal system for the development, in particular the need to both accommodate a house on the back lot/site, and to have sufficient irrigation area for the system (i.e. what is envisaged is an ATU system, which generally needs areas where the treated waste is irrigated through sub-surface irrigation). That information would significantly undermine the initial planning argument, which was that the lot layout was contrived as a means of meeting the lot size requirements.



## 11.2 SCHEME AMENDMENT 10 TRANSPORTABLE AND PREFABRICATED BUILDING CONTROLS

<b>SUBJECT INDEX:</b>	Town Planning Scheme Amendments
<b>STRATEGIC OBJECTIVE:</b>	Governance systems that deliver responsible, ethical and accountable decision-making.
<b>BUSINESS UNIT:</b>	Development Services and Policy
<b>ACTIVITY UNIT:</b>	Development Services and Policy
<b>REPORTING OFFICER:</b>	Manager, Development Services and Policy - Anthony Rowe
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Port Geographe Development Plan Area  Attachment B Schedule of Submissions 

### PRÉCIS

The Amendment was approved by Council for advertising and was advertised from 12 October 2016 to 23 November 2016.

Pursuant to Regulation 50(3), *Planning and Development (Local Planning Schemes) Regulations 2015*, Council must now pass a resolution to either: support the amendment; support the amendment with modifications; or not support the amendment.

The Officer Recommendation is the Amendment be supported with no modifications.

### BACKGROUND

Council's consideration is requested to approve Scheme Amendment AMD21/0010 following its consideration of the submissions received.

The Amendment has had a complicated history. This is effectively the second time the Amendment has been advertised and now recommended for approval.

Council had resolved on 25 November 2015 to seek the Minister's approval (initial amendment) to amend its Scheme and introduce controls for transportable homes. This had resulted from community concern arising from a second hand dilapidated dwelling placed at a water front lot at Port Geographe, together with a realisation that the City's urban renewal initiatives could see similar occurrences arise across the City; encouraging the replacement of dilapidated buildings in the older parts of the City close to the town centre by increasing the density and development potential.

It has subsequently occurred, through negotiation between the City and the owner, that the particular matter of the house at Port Geographe has now been largely resolved.

The initial Amendment was to include a new definition for *prefabricated buildings* that would capture the feature of a *transportable home*. This would require that for all *prefabricated buildings* a planning approval would be required and that it would be assessed against a new *development standard* to be introduced into the Scheme (at Part 5). It also provided discretion to consult with the community as part of the decision-making process.

The initial Amendment also included a 'prohibition' on prefabricated buildings being located within the area defined by a Special Control Area on the Scheme map and referred to in the Scheme at subpart 6.9 as the Port Geographe Development Plan Area.

On 3 May 2016, the City received the Minister's decision (27 April 2016). The Minister decided to decline the City's *Amendment 10 - Prefabricated Buildings*. The Minister also specifically declined the

request to prohibit transportable buildings/prefabricated buildings in the Port Geographe Development Plan area.

The Minister, as an alternative, offered to the City the opportunity to introduce new definitions for *Re-purposed dwellings* and *Second-hand dwellings* together with the City's development control, and to make that such development needed to have the City's planning approval prior to its relocation. The outcome of this policy would be to remove the current exemption from planning approval, now given to *single houses*, and if the proposal was captured by either the definition of a *Re-purposed dwelling* or a *Second-hand dwelling* it would require the City's approval. The City could then be able to assess the merit of the proposal and be satisfied it was in keeping with the amenity of the locality or it could impose conditions to align it.

The Minister's offer was a substantive change to the City's initial amendment. Consequently the Council, at its meeting 27 July 2016, adopted the recommendations of the Minister and approved the Amendment for re-advertising.

The City was procedurally required to provide the opportunity for the EPA to comment prior to commencing advertising.

The Amendment was advertised from 12 October 2016 to 23 November 2016 as a Standard Amendment for 28 days, following the expiry period for the EPA to make comment (42 days).

## **STATUTORY ENVIRONMENT**

### **Planning and Development (Local Planning Schemes) Regulations 2015.**

The Regulations provide procedures for Scheme amendments and importantly set timeframes around the process steps. They establish 3 classes of amendment: *Basic*; *Standard*; and *Complex*.

*Basic* – Advertising not required.

*Standard* - Advertising required, 28 days.

*Complex* - WAPC approval prior to Advertising, 42 days.

The City's Amendment 10, is required to proceed as a *Standard* amendment.

The minimum advertising period for a 'standard' amendment is 28 days.

### **Deemed Provisions Schedule 2, Planning and Development (Local Planning Schemes) Regulations 2015.**

The *Deemed Provisions* prevail over any provision in a local government town planning scheme.

The *Deemed Provisions* exempt a *single house* and associated developments from requiring planning approval where they meet the *Deemed-to-Comply* provisions of the R-Codes. An exception is made where a *single house* is to be located in an area identified in the Scheme as a Special Control Area.

The Minister's proposal is to introduce a new land use for *Re-purposed Dwellings* and *Second-hand dwellings* so that proposals for such would not be included in the definition of a *single house* and therein would require planning approval.

## R- Codes

The R-Codes prescribe design controls for areas zoned 'Residential', as shown on a Scheme map. The R-Codes provisions may also apply to other zones in the Scheme, where residential development is permissible.

The R-Codes are arranged as a series of Objectives, and under each is listed Deemed to Comply criteria (the proposal meets the Objective and is permitted) or Design Principles (only where deemed to comply criteria is not met are these guidelines used for a planning judgement).

The R-Codes provide a limited opportunity for a local government to vary the Deemed to Comply criteria but this is subject to WAPC approval. The items that can be varied are restricted and presently do not address simple but important factors that contribute to a consistent character.

Factors that contribute to a consistent character not presently facilitated in the R-Codes include:

- a) building height minimum - for a consistent mass and proportion;
- b) required roof form, and pitch; and
- c) required façade elements including building articulation on the lot, verandahs, eaves, parapets and building colours.

## RELEVANT PLANS AND POLICIES

The City does not have a Local Planning Policy addressing transportable or prefabricated buildings.

Single houses in R-Coded areas, by virtue of the deemed provisions, do not require planning approval if they meet the *Deemed to Comply* requirements of the R-Codes (exemption). This however does not apply to areas identified in the Scheme as a Special Control Area.

The Port Geographe Development Plan Area is identified as a Special Control Area in Scheme 21, and it in turn refers to the City's Urban Centres Policy (LPP4) which includes Port Geographe.

This Local Planning Policy includes the general residential area within the Port Geographe Development Plan area and it specifies the use of 'masonry' as a ground level construction material.

The Local Planning Policy is reflective of a *restrictive covenant* that applies to the title lots within the Port Geographe Development Area. The Port Geographe development area makes up 3% of the City's residential area and in that area only 23 titled lots remain to be developed.

## FINANCIAL IMPLICATIONS

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

### Long-term Financial Plan Implications

Nil.

## STRATEGIC COMMUNITY OBJECTIVES

The amendment is considered to be consistent with the following community objectives of the City's *Strategic Community Plan 2013* –

- 2.2 *A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections;*

## RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identified 'downside' risks only, rather than upside risks as well.

No significant risks are identified consequential to the implementation of the Officer Recommendation.

## CONSULTATION

The City received advice from the WAPC confirming the Amendment is a 'Standard amendment' and approved it to be advertised.

The City received advice from the EPA (after 42 days) that no additional environmental conditions are required.

The Amendment was advertised from 12 October 2016 to 23 November 2016.

One community submission was received during the consultation period. It was received from the Port Geographe Land Owners Association. It advised that it had met the Minister who it has said would support the re-inclusion of a restriction on transportable homes and a restriction on building materials if it only affects a relatively small area, like Port Geographe Development Plan Area.

The Schedule of Submissions is attached at Attachment A.

## OFFICER COMMENT

The intent to introduce controls over *Re-purposed dwellings* and a new definition of *Second hand dwellings*; as offered by the Minister has not drawn any opposition from the community.

The Minister's definition will address dongas, shipping containers, railway carriages, caravan park homes and the like.

The Minister's definition for *Secondhand dwellings* will also address the attempt to transfer a dwelling from one area to another. Both definitions will exclude a 'single house' from the exemption to obtain planning approval and as such it enables the City to assess applications for single houses that fit the definition of either a *Re-purposed dwellings* or *Second hand dwellings* by a development standard.

The proposed development standard is:

*"The local government shall not grant planning approval for development of Re-purposed dwellings and Second-hand dwellings unless it is satisfied that the development will be consistent with the character of the locality in which development is proposed, the maintenance of the amenity of the locality in which development is proposed and the objectives, policies and other provisions of the Scheme which apply to the land where development is proposed. The local government may, if it considers it appropriate to do so, advertise an application for development of a Re-purposed dwelling and Second-hand dwelling pursuant to clause 10.4 of the Scheme.*

These definitions however, do not apply to a new transportable home and this has remained a concern to some elements in the community. A new transportable single house is a 'single house' and exempt from planning approval if compliant with the R Code and located in a Residential Zone.

The City understands the basis for not including new transportable buildings, to foster innovation. It is anticipated that an increasing number of buildings will in the future be of a prefabricated construction. However this should not, or need not, be an argument to accept a lesser standard in terms of the maintenance of the amenity of a locality, or that existing areas that do not have *restrictive covenants* should not also expect the same courtesy; that new development contribute positively to the amenity of the locality.

On this basis the City continues to advocate that the R-Codes need further design control over factors that contribute to a desired amenity; this is more important than the building materials and method of construction. These further design controls include:

1. building height and space around a building - for a consistent mass and proportion;
2. required roof form and pitch; and
3. required façade elements including positioning on the lot, verandahs, eaves, parapets and building colours.

The City continues to advocate for the inclusion of these controls.

### Port Geographe

The City had previously advocated for a restriction on transportable homes/ transportable buildings' in the Port Geographe Development Plan Area but this was rejected in the Minister's correspondence 3 May 2016.

Notwithstanding the advice received by the Port Geographe Landowners Association, there is uncertainty whether the restrictions it advocates would be approved, as it is noted to be a reversal on previous decision, and a formal consideration of an amendment would be after recommendation from the WAPC.

### *Present controls*

The City following the placement of the relocated Building at Port Geographe amended the Local Planning Policy (Urban Centres Port Geographe Village Centre - Design Guidelines and Performance Standards). The Local Planning Policy was applied to all 'titled' lots within the Port Geographe Development Plan area.

The amendment to the planning policy introduced the following requirement.

"all residential development within the area of the Village Centre Precinct Map requires planning approval,"

and

"(b) Ground floor walls should be of masonry construction."

Further, because the Port Geographe Development Plan Area is a Special Control Area, it was unaffected by recent changes to the Planning Regulations to exempt 'single houses' from the need to obtain planning approval. All 'single houses' in the Port Geographe Development Plan Area need a planning approval from the City.

With regard to Port Geographe, the control on building materials is for a purpose of amenity. There is no particularly need for robustness of material that cannot be achieved by a range of other technologies.

Since the Local Planning Policy amendment was introduced there have been no transportable or secondhand buildings placed in Port Geographe. The City however, is obligated, because the planning system is practical, i.e. 'due regard', to consider an application for consistency with the 'purpose'. On this basis the practice has been that if the outcome meets the 'purpose' of the Local Planning Policy, i.e. if the final product looks like rendered masonry and given the legitimate planning purpose is about appearance, the City has reasonably approved buildings using construction materials that when finished appear the same as rendered masonry.

It is arguable whether a policy/control, placed in the Scheme to restrict building materials, would in practice be an advantage over the current arrangement in the Local Planning Policy.

A prohibition on certain building materials is unlikely to be supported by the State Government in finalizing the Amendment, but in any case, a 'prohibition' was set aside by the SAT and an appeal that involved the specification of only brick construction materials in a Conservation Zone. It was determined that the use of timber was consistent with the amenity sought by Conservation Zone, regardless of the prohibition on anything other than brick.

It should also be noted that there are many examples of arguably discordant brick houses around the City. The control of building materials is no assurance of a positive contribution to the amenity.

The City's position is that it does not support the control of materials as a measure of fit within a locality, but recognises that further design controls over factors that contribute positively to a desired amenity could be pursued.

#### Restricting Building materials as an Option

Notwithstanding the City does not see an advantage over the current arrangement, the Option to restrict certain building materials is provided for Council's consideration.

The Port Geographe Land Owners Association is seeking two things, a restriction on transportable buildings and a restriction on ground floor building materials.

The City presently does not have a definition for a 'transportable building', and to introduce it into the Amendment is sufficiently substantial that it would warrant the Amendment to be re-advertised (which could not occur unless and until the Minister had approved that re-advertising occur).

The City considers the Port Geographe Land Owners Association's objective to restrict all 'transportable buildings' would also be achieved by restricting the building materials, to types not used in a transportable building.

Whilst it is possible to relocate a brick building, if one only has to pay the cost of relocation it could be financially attractive, such would nonetheless be captured by the Minister's definition of *Re-purposed dwelling* or a *Second-hand dwelling* and the City assessment would ensure the outcome was compatible with the locality. City considers it is highly unlikely that a new transportable home, made of brick, would occur because there is no cost advantage over an in-situ construction.

On this basis, restricting the use of construction material to only brick or masonry would restrict transportable buildings. This however, would not entirely eliminate the possibility of a transportable building if such, when completed, would be indistinguishable from that of a masonry construction.

Should Council be inclined to pursue a prohibition, this could be achieved by introducing an additional clause in Part 6, sub part 6.9 - Port Geographe Development Area, that incorporates the use of the word 'shall', to impose a prohibition on the use of all materials other than brick or masonry at the ground level of any dwelling within the Port Geographe Development Plan Area.

A 'Special Control Area' in the Scheme enables specific provisions to be applied in addition to the provisions applying to the underlying zone or any general provisions of the Scheme.

The suggested wording is:

"6.9 (p). The external walls, excluding the extent of any doors and windows, for the ground level of any building intended to be primarily for human habitation, shall only be of masonry construction (stone, brick, rendered cement, or rendered brick)."

The City however, is not confident that such an amendment would be effective at the SAT.

## CONCLUSION

The definition of *Re-purposed dwellings* and *Second-hand dwellings*, as proposed by the Amendment, will provide a valuable element of control that will contribute to maintaining the amenity of the City's established areas. (*Noting that most new housing estates have restrictive covenants that stop such development*).

Importantly, and of concern, is that the Amendment, as it was limited by the Minister, does not apply to new transportable dwellings.

The City maintains a position that the materials used, and the construction methods employed, are not as important in maintaining or enhancing the amenity as are design controls addressing building height (max and min), the space around a buildings, the roof form and elements including verandahs, eaves, parapets and building colours.

The City will continue to pursue additional R-Codes design controls that can ensure future development is compatible with its locality, regardless of material or construction method.

In regard to Port Geographe, the original amendment identified factors of a comparably low land price, a coastal location and a potential for a high capital gain that made it attractive to 'park' a transportable building, to realise a rental income whilst building a capital gain.

Some in that community were concerned that this could detract from establishing a 'community', result in anti-social behaviours, despite the holiday home control, and if the building was blighted it would adversely affect the visual amenity of the locality.

The City in response introduced additional controls in the Local Planning Policy, that made all 'single houses' subject to planning approval, and it specified a ground floor construction material.

Since then it has ensured all new buildings are of brick or masonry construction, or have achieved the same visual purpose, when accommodating innovative construction techniques.

The City considers the current control, which requires single houses to have planning assessment, and the requirement that ground floor walls should be of masonry construction has proven to be adequate. No modification to the advertised Amendment is therefore necessary.

## OPTIONS

1. Approve the Amendment.
2. Approve the Amendment as modified by:

Inserting as clause 6.9 (p) in the Scheme (which applies to Port Geographe only) –

“The external walls for the ground level of any building intended to be primarily for human habitation, excluding the extent of any doors and windows, shall be of masonry construction (stone, brick, rendered cement, or rendered brick).”  
*(to be inserted at Part 3 of the Officer Recommendation)*

3. Decline to approve the amendment.

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

Pursuant to Regulation 50, the Council is required to submit its decision to the WAPC within 60 days from the close of submissions. The City will prepare the required documentation and forward to the WAPC within three weeks of Council’s decision.

Note: Councillor Bleechmore proposed an Alternative Motion for Council consideration that would restrict building materials used.

#### **ALTERNATIVE MOTION**

Moved Councillor G Bleechmore

That the Council:

1. Pursuant to Part V of the *Planning and Development Act 2005*, adopts Amendment No. 10 to the City of Busselton Local Planning Scheme No. 21 for final approval, for the following purposes:
  - 1.1 Inserting into Schedule 1 the following:
    - i. **“Repurposed dwelling** — means a building or structure not previously used as a single house, which has been repurposed for use as a dwelling”; and
    - ii. **“Second-hand dwelling** — means a dwelling that has been in a different location, and has been dismantled and transported to another location, but does not include a new modular or transportable dwelling.”
  - 1.2 Inserting in to Table 1 (Zoning Table).
    - i. **“Repurposed dwelling**”, as a separate land use.”; and
    - ii. **“Second-hand dwelling**”, as a separate land use”
  - 1.3 Amending the Table 1 (Zoning Table) to make a *Re-purposed dwelling* or *Second-hand dwelling* a 'D' use in any zone in which a single house is a 'P' use or 'D' use and 'X' use in the zones where a single house is not permitted.
  - 1.4 Inserting as a new clause 5.9, with subsequent clauses being renumbered accordingly, of the following:
 

***Re-purposed dwelling and Second-hand dwelling***

*The local government shall not grant planning approval for development of a Re-purposed dwelling or Second-hand dwelling unless it is satisfied that the development will be consistent with the character of the locality in which development is proposed, the maintenance of the amenity of the locality in which development is proposed and the objectives, policies and other provisions of the Scheme which apply to the land where development is proposed. The local government may, if it considers it appropriate to do so, advertise an application for development of a Re-purposed dwelling or Second-hand dwelling pursuant to clause 64 Schedule 2 Development (Local Planning Schemes) Regulations 2015.*
2. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to endorse the Schedule of Submissions at Attachment A, modified to reflect the changes to point 3 below, relative to the published officer recommendation, prepared in response to the public consultation undertaken in relation to Amendment No. 10.



3. Pursuant to r.50(3) of the *Planning and Development (Local Planning Scheme ) Regulations 2015*, resolves to make changes to the Amendment following the consideration of submissions as set out below (and to be reflected in a Schedule of Modifications):
  - 3.1 Inserting a new clause into the Scheme as follows (as clause 6.9.2 (p)) –

“The external walls, excluding the extent of any doors and windows, for the ground level of any building intended to be primarily for human habitation, shall only be of masonry construction (stone, brick, rendered cement, or rendered brick).”
  - 3.2 The reason for the above-described modification being as follows –

“The modification will ensure that development which does not consist of masonry construction at the ground floor level cannot be developed in the Port Geographe Development Area, without a planning application being made and an assessment made of the proposed development. That will protect the visual amenity of that sensitive area, the environment in which, partly because of the marine environment, will significant affect the longevity of lightweight and non-masonry materials..”
4. Pursuant to r.52 confirms the incorporation of environment conditions has not been required.
5. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to forward Amendment No. 10 to the City of Busselton Local Planning Scheme No. 21 to the Western Australian Planning Commission with a request for the approval of the Hon. Minister for Planning.
6. Pursuant to r.56 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, should directions be given that modifications to Amendment No. 10 are required, those modifications being undertaken accordingly on behalf of the Council unless they are considered by Officers to be likely to significantly affect the purpose and intent of the draft Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.

**MOTION LAPSED FOR WANT OF A SECONDER**

Note: As the Motion lapsed, the Mayor sought a mover for the Officer Recommendation.

**Council Decision and Officer Recommendation**

**C1703/045** Moved Councillor C Tarbotton, seconded Councillor P Carter

That the Council:

1. Pursuant to Part V of the *Planning and Development Act 2005*, adopts Amendment No. 10 to the City of Busselton Local Planning Scheme No. 21 for final approval, for the following purposes:
  - 1.1 Inserting into Schedule 1 the following:
    - i. **“Repurposed dwelling** — means a building or structure not previously used as a single house, which has been repurposed for use as a dwelling”; and
    - ii. **“Second-hand dwelling** — means a dwelling that has been in a different location, and has been dismantled and transported to another location, but does not include a new modular or transportable dwelling.”
  - 1.2 Inserting in to Table 1 (Zoning Table).
    - i. **“Repurposed dwelling”, as a separate land use.”; and**
    - ii. **“Second-hand dwelling”, as a separate land use”**

- 1.3 Amending the Table 1 (Zoning Table) to make a *Re-purposed dwelling* or *Second-hand dwelling* a 'D' use in any zone in which a single house is a 'P' use or 'D' use and 'X' use in the zones where a single house is not permitted.
- 1.4 Inserting as a new clause 5.9, with subsequent clauses being renumbered accordingly, of the following:

***Re-purposed dwelling and Second-hand dwelling***

*The local government shall not grant planning approval for development of a Re-purposed dwelling or Second-hand dwelling unless it is satisfied that the development will be consistent with the character of the locality in which development is proposed, the maintenance of the amenity of the locality in which development is proposed and the objectives, policies and other provisions of the Scheme which apply to the land where development is proposed. The local government may, if it considers it appropriate to do so, advertise an application for development of a Re-purposed dwelling or Second-hand dwelling pursuant to clause 64 Schedule 2 Development (Local Planning Schemes) Regulations 2015.*

2. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves to endorse the Schedule of Submissions at Attachment A prepared in response to the public consultation undertaken in relation to Amendment No. 10.
3. Pursuant to r.50(3) of the *Planning and Development (Local Planning Scheme ) Regulations 2015*, resolves to make no change to the Amendment following the consideration of submissions.
4. Pursuant to r.52 confirms the incorporation of environment conditions has not been required.
5. Pursuant to r.53 of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to forward Amendment No. 10 to the City of Busselton Local Planning Scheme No. 21 to the Western Australian Planning Commission with a request for the approval of the Hon. Minister for Planning.
6. Pursuant to r.56 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, should directions be given that modifications to Amendment No. 10 are required, those modifications being undertaken accordingly on behalf of the Council unless they are considered by Officers to be likely to significantly affect the purpose and intent of the draft Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.






**CARRIED 7/2**

Voting:

For the motion: Councillor R Bennett, Councillor T Best, Mayor G Henley, Councillor J McCallum, Councillor C Tarbotton, Councillor P Carter and Councillor R Reekie.

Against the motion: Councillor G Bleachmore and Councillor R Paine.

11.3 AMENDMENT 22 TO LOCAL PLANNING SCHEME 21 TO REZONE LOT 41 (182) GEOGRAPHE BAY ROAD QUINDALUP FROM 12.5 TO R20 - APPROVAL

<b>SUBJECT INDEX:</b>	Town Planning Scheme Amendments
<b>STRATEGIC OBJECTIVE:</b>	Governance systems that deliver responsible, ethical and accountable decision-making.
<b>BUSINESS UNIT:</b>	Development Services and Policy
<b>ACTIVITY UNIT:</b>	Development Services and Policy
<b>REPORTING OFFICER:</b>	Manager, Development Services and Policy - Anthony Rowe
<b>AUTHORISING OFFICER:</b>	Director, Planning and Development Services - Paul Needham
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Lot 41 Site Plan  Attachment B Schedule of Submissions  Attachment C Schedule of Modifications  Attachment D Scheme Map Lot 41 Geographe Bay Road  Attachment E Feature Survey Plan 

**NOTE:** This matter was listed on the agenda for the Council's 22 February 2017 ordinary meeting, wherein the Council resolved to defer consideration until this meeting. The matter was deferred at the request of the landowners, who, due to an unavoidable and late change in circumstances, were unable to attend either the meeting or the preceding briefing and community access sessions. The main body of the report presented here is unchanged from the report placed on the 22 February meeting agenda. During the intervening period, however, City officers have managed to further liaise with the landowners' representatives, primarily via teleconference, and the officer recommendation has been revised. An explanation of the change is provided under the heading 'ADDENDUM' just prior to the officer recommendation – the Schedule of Submissions (Attachment B) and Schedule of Modifications (Attachment C) have also been modified to reflect the changes to the officer recommendation.

#### PRÉCIS

The Council is asked to consider, after consultation, a proposal to rezone Lot 41 (182) Geographe Bay Road, Quindalup from R12.5 to R20 for the purpose of accommodating four dwellings.

The draft amendment was approved by Council for advertising and was advertised from 12 October 2016 to 23 November 2016.

Pursuant to Regulation 50(3), *Planning and Development (Local Planning Schemes) Regulations 2015* Council must now pass a resolution to either: support the amendment; support the amendment with modifications; or not support the amendment.

#### BACKGROUND

The Council is asked to consider approval of the proposal to rezone land at Lot 41 (182) Geographe Bay Road Quindalup, following its consideration of the submissions received.

The subject land is at Lot 41 (182) Geographe Bay Road, Quindalup and is 2,259 m<sup>2</sup> in area. The lot has been vacant since 2010 when a single dwelling was demolished to make way for two dwellings that did not proceed. The land is mostly cleared of vegetation except for a stand of peppermint trees in the middle of the block that separates the land into two readily developable areas.

The land is zoned 'Residential' in Scheme 21 and coded R.12.5, but it is also located in the Quindalup Special Character Area. The provision for the Quindalup Special Character Area (Schedule

4 and LPP) prevails where there is conflict with the R Code, which generally applies to residential land throughout Busselton.

The Quindalup Special Character Area policy sets the minimum lot size. The current policy allows a minimum lot size of 800m<sup>2</sup> and if the original lot exceeds 2,400m<sup>2</sup> three or more dwellings may be developed at the R12.5 density of 800m<sup>2</sup> per lot density.

The owner is proposing re-code the land to R20 (average lot size 450m<sup>2</sup>) to enable 4 dwellings to be accommodated.

The proposal is also to amend the Quindalup Special Character Area provision, at clause 1 (b) to read (addition proposed in bold) -

- (b) *The local government may only approve the development of three or more grouped dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>, **except for Lot 41 on Diagram 23175, House 182 Geographe Bay Road, Quindalup, where the development of a maximum of four dwellings may be approved.***

The proposal also involves amending the Scheme map so that the R20 code applies to the lot.

## **STATUTORY ENVIRONMENT**

The active statutes affecting this proposal include -

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015;* and
- *City of Busselton Local Planning Scheme No. 21.*

### ***Planning and Development Act 2005***

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

### ***Planning and Development (Local Planning Schemes) Regulations 2015***

The *Planning and Development (Local Planning Schemes) Regulations 2015*, which came into operational effect on 19 October 2015, identifies three different levels of amendments – basic, standard and complex. The resolution of the local government is to specify the level of the amendment and provide an explanation justifying this choice. This Amendment is deemed to be a 'standard' amendment.

### ***City of Busselton Local Planning Scheme No. 21.***

The City of Busselton Local Planning Scheme No. 21 allocates the spatial arrangement of the area by the Scheme Map. The Scheme text describes land uses, the residential densities (identified on the Map) by reference to the R-Codes or a development standard in certain areas, and it prescribes the development standards for works associated with land uses.

The Scheme establishes Special Character Areas which describe special controls that act in conjunction with the Scheme and the R-Codes. The Quindalup Special Character Area is identified in the Scheme (at Schedule 4).

The pertinent provision is cl.1b in Schedule 4 which provides:

- (b) *council will only permit the construction of grouped housing development of three or more dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>*

The Scheme also provides at cl. 5.3 (Special Application of Residential Design Codes) some limited circumstances that enable lots to be created less than indicated by the R-Codes classification shown on the Scheme map. These provisions do not apply to the Special Character Areas such as Quindalup.

#### **RELEVANT PLANS AND POLICIES**

- State Planning Policy 3.1 Residential Design Codes of Western Australia
- State Planning Policy 2.6 - Coastal Management
- City of Busselton Local Planning Strategy (Draft, advertised 2015)
- City of Busselton Local Planning Policy 3 – Special Character Areas and Visual Management Policy

#### ***State Planning Policy 3.1 Residential Design Codes of Western Australia***

The Residential Design Codes ('R-Codes') address development standards as well as assigning density by prescribing the minimum and average lot sizes for the coded categories, ranging from R2 at the lowest through to R80 at the highest (note that there are denser codes, but the permissible density only increases for multiple dwellings – i.e. flats/apartments – but not for single houses or grouped dwellings – i.e. houses, villas, townhouses).

In areas coded R12.5 the R-Codes prescribe a minimum site area per dwelling of 700m<sup>2</sup> and an average of 800m<sup>2</sup>. In areas coded R20 it prescribes a minimum site area per dwelling of 350m<sup>2</sup> and an average of 450m<sup>2</sup>. The area taken by internal driveways servicing grouped dwellings are counted in the average of the site area, but not the minimum.

In the development of Lot 41 an internal driveway will be required.

#### ***State Planning Policy 2.6 - Coastal Management***

The purpose of this Policy (SPP2.6) is to provide guidance for decision-making within the coastal zone including managing development and land use change. The policy in summary requires development to be setback 170m from the 'horizontal shoreline datum' if not within an 'infill' area.

The subject land, whilst in a coastal location and only around 120m from the HSD, is clearly infill development. The proposal is consistent with SPP 2.6.

#### ***City of Busselton Local Planning Strategy***

The purpose of the (Draft) Local Planning Strategy (LPS) is to set out the long term form (25 years) of the City and guide progressive amendments to the City's development control framework; within the next ten years. The LPS identifies the Busselton City Centre and the Dunsborough Town Centre as focal activity centres in the area. The town of Dunsborough is planned to have an ultimate population of 20,000 people, to be accommodated through both consolidation and expansion of its urban area.

The Local Planning Strategy identifies urban/residential consolidation at the Dunsborough Town Centre and for an area extending up to Elmore Road; which is specifically identified for *Urban Consolidation* (medium+ density).

The area to the east of Elmore Road, including the subject land, is identified in the Local Planning Strategy to be retained as low density. The proposal is consistent with the LPS, as R20 retains low density development.

***City of Busselton Local Planning Policy 3 – Special Character Areas and Visual Management - 3B Quindalup Special Character Area Provisions***

The Quindalup Special Character Area extends from Caves Road to Geographe Bay Road from east of Elmore Road through to Toby Inlet.

The background provided in the policy explains its reason:

*Increasing pressures for higher density residential and further tourist developments in recent years have prompted the City to act (1993) to preserve the highly valued character of the Quindalup Strip. Concerns with regard to the loss of special character have been particularly evident in the significant level of community reaction received to proposed re-zonings and subsequent developments within the Strip.*

The subject land is in Precinct 2 within the Quindalup Special Character Area.

The description for Precinct 2 is an area “of a mixed blend of old and new housing styles”. In other words there is no homogeneous built form.

The primary character elements therefore are the building setbacks and the street side vegetation. Accordingly, the development controls in *Precinct 2* describe a building set back of 10m from the street front and other provisions describe maintaining a heavily vegetated street line.

An important development control in the context of this amendment proposal is cl 3.3.2(d) in the Quindalup Special Character Area -

- (d) *A Residential Development Density of R12.5 will apply to all Group Housing developments involving three or more dwellings (i.e. minimum lot size of 2,100m<sup>2</sup>).*

This Development Control suggests that when the policy originated, notwithstanding the ‘policy background’, a higher density in Sector 2 was envisaged to provide 3 dwellings from 2,100m<sup>2</sup> instead of that now described in the Scheme - 3 dwellings from 2,400m<sup>2</sup> (using present day R-Codes lot sizes at R12.5). It is understood the Scheme was changed from 2,100m<sup>2</sup> to 2,400m<sup>2</sup> in response to community concern about the potential for too much redevelopment to occur.

## **FINANCIAL IMPLICATIONS**

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

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

Nil

## **STRATEGIC COMMUNITY OBJECTIVES**

The Officer recommendation is consistent with community objective 5.2 of the City’s Strategic Community Plan 2013, which is: ‘Growth is managed sustainably and our environment is protected and enhanced as we develop’.

## RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identified 'downside' risks only, rather than 'upside' risks as well. No significant risks have been identified.

## CONSULTATION

Consultation was undertaken in accordance with clause 47 *Planning and Development (Local Planning Schemes) Regulations 2015*.

The Amendment in a Standard Amendment and was advertised for 42 days between 12 October 2016 and 23 November 2016.

Five agency submissions were received and three public submissions were received.

The Schedule of Submissions is attached at Attachment A.

## OFFICER COMMENT

There is not a strong basis for either changing or retaining the current arrangement as it now applies to lot 41 (182) Geographe Bay Road Quindalup.

The arguments against change are that the Lot is not within the town centre or identified by the recently consulted Local Planning Strategy, which identified the area 200m east of the subject land for *Urban Consolidation* (medium+ density) and this area extends 1500m to Dunn Bay Road.

The area identified *Urban Consolidation* (medium+ density) is large, providing considerable scope to increase the density of development in the town of Dunsborough over a 25 year time frame. There is therefore no pressing need to look beyond the area that has been identified *Urban Consolidation* (medium+ density).

The principal argument in support of the proposal is that the area is intended for low density development. The proposed Amendment will facilitate four lots with an average size of 500m<sup>2</sup> and by contemporary standards 500m<sup>2</sup> is a low density. Provided the front setback is maintained consistent with the policy, it is arguable that lots at 500m<sup>2</sup> can still maintain the purpose of a low density environment and therefore are consistent with the State Policy which advocates increasing density at centres – because this proposal is still low density.

The above matters were considered by Council at its meeting on 27 July 2016. These matters are finely balanced and Council resolved to approve the Amendment for community consultation.

The City has now received submissions from the community, three of the five adjoining neighbours opposing the amendment on the following grounds.

1. It is inconsistent with the low density intent of the current Scheme and Local Planning Policy for the Quindalup Special Character Area. The location is not within the town centre.
2. No change was proposed in the City's recent Local Planning Strategy.
3. The development will cause the loss of peppermint trees and Western Ringtail Possum (WRP) habitat.
4. The increased intensity (4 dwellings instead of 2) and the internal traffic arrangement will detract from the amenity (noise) to a greater extent than the current policy.

5. The increased intensity (4 dwellings instead of 2) will contribute to existing parking congestion on Geographe Bay Road.
6. Existing setbacks should be retained.

In addition to the community concern, DPaW requested an extension of the consultation period to assess the property and as a consequence has requested the retention of the peppermint trees. This request has now been heightened by the change of status for the Western Ringtail Possum to a critically endangered status.

The other agency (4) comments are classed as procedural and do not affect the content of the proposed amendment.

The initial discussions regarding the lot were based upon the fact that two, two storey dwellings had been approved at the site, that four dwellings could be placed within the same arrangement without the additional dwellings being noticeable and thereby not adversely affecting the character of the locality. The applicant subsequently changed this to four at ground and then sought approval for five dwellings. This was on the basis that if the 'R20', as generally applies to residential land, was applied to lot 41 then the lot size could accommodate four dwellings and a fifth dwelling if using the area discount available for a single bedroom dwelling. The City indicated it would not support five dwellings.

Mixed responses have also been provided by the applicant, first that they were willing to consider an arrangement consistent with the current policy, then additional design controls to protect the character to allow a more flexible arrangement, but finally rejecting any additional design controls.

The justification for the additional dwellings, considered as 'finely balanced', was not strong. The proposal has now not been supported by the adjoining landowners, and the 'fine balance' has tipped against proceeding with the amendment.

Significantly, and since Council's consideration on 27 July 2016, the comments received by DPaW have placed an increased importance upon the retention of the peppermint trees located at the subject land. Under the current Scheme and the Quindalup Special Character Area policy the trees would not be protected if a development for two dwellings was to proceed. However, there is an opportunity through this amendment to introduce a control, to retain the peppermint trees, in return for supporting the two additional dwellings; to be a total of four dwellings at the site. It is possible through design controls to satisfy the DPaW and the neighbour's desire to retain the peppermint trees, and by also requiring space around the buildings, enhance the habitat for the Western Ring Tail Possum and present a visually low density development consistent with the Quindalup Special Character Area policy.

It is not uncommon to vary requirements in a Scheme, outside of an LPS, if there is a community benefit in doing so. Compensation for biodiversity enhancement is often used. If the Amendment can in fact preserve the trees and enhance the WRP habitat, above that which is provided by the current policy, it is reason to tip the 'fine balance' in favour of proceeding.

Aside from the above issue the land is physically suitable for its intended use, the amendment supports residential development in a residential zone, services are available and the proposal will have a negligible impact upon local traffic and on street carparking. Other than the matter of local character, and now the retention of the peppermint trees, there are no issues impediments affecting the development of Lot 41 (182), Geographe Bay Road, Quindalup.



### **Possible way forward**

As mentioned previously the land provides two distinct developable areas. The lot is comparably deep. It is dissected in the middle by a substantial stand of peppermint trees but there is a pathway (driveway width) that lies between them. This is potentially advantageous as it also provides the opportunity to keep any increase in vehicle traffic away from the edges of the property; avoiding the potential for disturbance to neighbours which was an expressed concern.

Retaining the peppermint trees also has a number of advantages apart from retaining the WRP habitat. It would also maintain a sense of low density and also create a site amenity.

On this basis it is suggested the amendment be modified to incorporate the following features:

- The retention of the peppermint trees and additional planting locations;
- Ensuring onsite traffic movement to avoid disturbance to neighbours; and
- Specifying the dwellings to be arranged as two, two storey buildings to minimise the on-ground footprint, to maintain setbacks consistent with the locality and to enhance the space around buildings; to present as low density.

This has been put to the applicant but rejected; both the two building configuration and additional design considerations.

### **CONCLUSION**

The justification for the Amendment, considering the LPS, was finely balanced. At consultation the amendment has not been supported by 3 of the adjacent properties, and DPaW request that that peppermint trees on the site be retained, would require additional controls. The amendment in the form it was advertised is not recommended to proceed.

It is however, possible to address the neighbour concerns by careful design to achieve an outcome that maintains space around buildings to reinforce the presentation of low density that importantly can strengthen the retention of the existing peppermint trees and result in an enhanced habitat for the critically endangered Western Ringtail Possum.

An amendment facilitating the additional dwellings as incentive for retaining the peppermint trees and enhancing the habitat for the critically endangered Western Ringtail Possum is supported, subject to design controls that maintain the low density character.

### **OPTIONS**

1. Recommend refusal;
2. Recommend approval without change; or
3. Recommend approval with further or different changes.

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

Pursuant to Regulation 50, the Council is required to submit its decision to the WAPC within 60 days from the close of submissions. Given the DPaW requested an extension for its submission the Councils decision will be forwarded within 60 days of the last submission.

### **ADDENDUM**

**There were a range of issues raised in submissions, principally associated with the perceived potential of development of the site to not be consistent with the amenity of the locality and, in particular, concerned with the potential removal of mature peppermint trees located on the site. It**

should be noted that, with the existing zoning and overall regulatory framework, there are in fact no effective controls over the clearing of the trees on the site at present.

As already noted, subsequent to the publishing of the 22 February agenda and the Council's deferral of the matter, officers have liaised further with the landowners' representatives, and have arrived at a revised officer recommendation, which officers consider both addresses the submitters' concerns more effectively, but is also more consistent with the landowners' objectives. In simple terms, the officer recommendation proposes –

- The retention of all of the mature peppermint trees on the site (i.e. those with a trunk diameter greater than 0.5 metres – these are identified on a feature survey which is provided at Attachment E, but essentially, this includes both the trees in more or less the middle of the block, but also those in the south-western corner);
- The need to have a minimum of 55% open space and a 10 metre front setback and for other setbacks to continue to be as per the R12.5 residential density code which currently applies to the land – note that this arises from clause 1 (a) of Schedule 4 of the Scheme, and is not an addition that needs to be made through a Council decision; and
- A requirement that the driveway to access the buildings on the site is placed along the eastern boundary of the lot, providing an additional setback of development from that boundary.

The officer recommendation, if ultimately supported by the Council, WAPC and Minister for Planning would result in a planning outcome that –

- Would preserve mature peppermint trees which could otherwise be removed, preserving habitat and protecting the amenity of the area;
- Would not result in the external appearance of the development from any viewing location outside the subject site being any different from what could result from the existing zoning of the site; and
- Would allow two additional households/owners to have the opportunity to live in such a desirable location.

Note: Councillor Bennett proposed an Alternative Motion for Council consideration that recommend refusal for Amendment No. 22.

#### **ALTERNATIVE MOTION**

Moved Councillor R Bennett, seconded Councillor J McCallum

That the Council:

1. Pursuant to Part V of the Planning and Development Act 2005, resolve to recommend refusal of Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21, for the purposes of:
  - i. Recoding Lot 41, Geographe Bay Road, Quindalup (Certificate of Title 1226-295) from 'R12.5' to 'R20';
  - ii. Amending the Scheme map accordingly; and
  - iii. Replacing clause 1 (b) of Schedule 4 of the Scheme with the following –
    - (b) The local government may only approve the development of three or more grouped dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>, except for Lot 41 on Diagram 23175, House 182 Geographe Bay Road, Quindalup (Certificate of Title 1226-295), where the development of a maximum of four dwellings may be approved.

2. Pursuant to r.53 of the Planning and Development (Local Planning Schemes) Regulations 2015, resolves to endorse the Schedule of Submissions at Attachment B, modified to reflect point 1 of this resolution, prepared in response to the public consultation undertaken in relation to Amendment No. 22.
3. Pursuant to r.52 the City confirms the incorporation of environment conditions has not been required.
4. Pursuant to r.53 of the Planning and Development (Local Planning Schemes) Regulations 2015 resolves to forward Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 to the Western Australian Planning Commission with a request for the refusal of the Hon. Minister for Planning.
5. Pursuant to r.56 of the Planning and Development (Local Planning Schemes) Regulations 2015, should directions be given that modifications to Amendment No. 22 are required, those modifications being undertaken accordingly on behalf of the Council unless they are considered by Officers to be likely to significantly affect the purpose and intent of the draft Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.

**LOST 2/7**

**Voting:**

For the motion: Councillor R Bennett and Councillor J McCallum.

Against the motion: Councillor T Best, Councillor G Bleechmore, Mayor G Henley, Councillor C Tarbotton, Councillor P Carter, Councillor R Reekie and Councillor R Paine.

Note: As the Motion was lost, the Mayor sought a mover for the Officer Recommendation.

**Council Decision and Officer Recommendation**

**C1703/046**

Moved Councillor G Bleechmore, seconded Councillor R Paine

That the Council:

1. Pursuant to Part V of the Planning and Development Act 2005, adopts Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 for final approval, for the purposes of:
  - i. Recoding Lot 41, Geographe Bay Road, Quindalup (Certificate of Title 1226-295) from 'R12.5' to 'R20';
  - ii. Amending the Scheme map accordingly; and
  - iii. Replacing clause 1 (b) of Schedule 4 of the Scheme with the following –
    - (b) The local government may only approve the development of three or more grouped dwellings at a density not exceeding R12.5 on lots with a minimum area of 2,400m<sup>2</sup>, except for Lot 41 on Diagram 23175, House 182 Geographe Bay Road, Quindalup (Certificate of Title 1226-295), where the development of a maximum of four dwellings may be approved.
2. Pursuant to r.53 of the Planning and Development (Local Planning Schemes) Regulations 2015, resolves to endorse the Schedule of Submissions at Attachment B prepared in response to the public consultation undertaken in relation to Amendment No. 22.
3. Pursuant to r.50(3) of the Planning and Development (Local Planning Scheme ) Regulations 2015, resolves to support the modifications to Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 shown in the Schedule of Modifications at Attachment C, prepared to address issues raised in submissions received during public consultation.
4. Pursuant to r.52 the City confirms the incorporation of environment conditions has not been

required.

5. Pursuant to r.53 of the Planning and Development (Local Planning Schemes) Regulations 2015 resolves to forward Amendment No. 22 to the City of Busselton Local Planning Scheme No. 21 to the Western Australian Planning Commission with a request for the approval of the Hon. Minister for Planning.
6. Pursuant to r.56 of the Planning and Development (Local Planning Schemes) Regulations 2015, should directions be given that modifications to Amendment No. 22 are required, those modifications being undertaken accordingly on behalf of the Council unless they are considered by Officers to be likely to significantly affect the purpose and intent of the draft Amendment, in which case the matter shall be formally referred back to the Council for assessment and determination.

**CARRIED 7/2**

Voting:

For the motion: Councillor T Best, Councillor G Bleechmore, Mayor G Henley, Councillor C Tarbotton, Councillor P Carter, Councillor R Reekie and Councillor R Paine.

Against the motion: Councillor R Bennett and Councillor J McCallum.

**12. ENGINEERING AND WORKS SERVICES REPORT**

Nil

**13. COMMUNITY AND COMMERCIAL SERVICES REPORT**

Nil

**14. FINANCE AND CORPORATE SERVICES REPORT**

Nil

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

Nil

**17. CONFIDENTIAL REPORTS**

Nil

**18. QUESTIONS FROM MEMBERS**

Nil

**19. PUBLIC QUESTION TIME**

Nil

**20. NEXT MEETING DATE**

Wednesday, 22 March 2017

**21. CLOSURE**

The meeting closed at 7.02pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 77 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON WEDNESDAY, 22 MARCH 2017.

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

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