

# minutes

## Policy Committee

MEETING HELD ON **MONDAY 11 MAY 2020**

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## CITY OF JOONDALUP

### MINUTES OF THE POLICY COMMITTEE MEETING HELD BY ELECTRONIC MEANS ON MONDAY 11 MAY 2020.

#### ATTENDANCE

##### Committee Members

Cr Christine Hamilton-Prime	<i>Presiding Member</i>	
Mayor Hon. Albert Jacob, JP		
Cr Kerry Hollywood	<i>Deputy Presiding Member</i>	
Cr Russell Poliwka	<i>Deputising for Cr May</i>	<i>to 5.59pm</i>
Cr Christopher May		<i>from 5.59pm</i>
Cr Nige Jones		<i>absent from 7.10pm to 7.13pm</i>
Cr Russ Fishwick, JP		
Cr John Chester		

##### Observers

Cr John Raftis		<i>from 5.46pm</i>
Cr Tom McLean, JP		
Cr Russell Poliwka		<i>from 5.59pm</i>
		<i>absent from 6.40pm to 6.41pm</i>
		<i>absent from 6.55pm to 6.58pm</i>
Cr Suzanne Thompson		<i>absent from 6.50pm to 6.51pm</i>
Cr John Logan		

##### Officers

Mr Garry Hunt	Chief Executive Officer	
Mr Jamie Parry	Director Governance and Strategy	
Ms Dale Page	Director Planning and Community Development	<i>absent from 7.12pm to 7.14pm</i>
Mr Mat Humfrey	Director Corporate Services	
Mr Brad Sillence	Manager Governance	
Mrs Vivienne Stampalija	Governance Coordinator	

#### DECLARATION OF OPENING

The Presiding Member declared the meeting open at 5.45pm.

## **DECLARATIONS OF INTEREST**

Nil.

## **APOLOGIES / LEAVE OF ABSENCE**

### **Leave of Absence previously approved**

Cr Christine Hamilton-Prime 1 May to 8 June 2020 inclusive.

## **CONFIRMATION OF MINUTES**

### **MINUTES OF THE POLICY COMMITTEE HELD ON 24 FEBRUARY 2020**

**MOVED** Cr Hollywood, **SECONDED** Cr Fishwick that the minutes of the meeting of the Policy Committee held on 24 February 2020 be confirmed as a true and correct record.

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Cr Hamilton-Prime, Mayor Jacob, Crs Chester, Fishwick, Hollywood, Jones and Poliwka.

## **ANNOUNCEMENTS BY THE PRESIDING MEMBER WITHOUT DISCUSSION**

Nil.

## **IDENTIFICATION OF MATTERS FOR WHICH THE MEETING MAY BE CLOSED TO THE PUBLIC**

In accordance with Clause 5.2 of the City's *Meeting Procedures Local Law 2013*, this meeting was not open to the public.

## **PETITIONS AND DEPUTATIONS**

Nil.

*Cr Raftis entered the electronic meeting at 5.46pm.*

**REPORTS****ITEM 1 ATTENDANCE AT EVENTS POLICY**

<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Jamie Parry Governance and Strategy
<b>FILE NUMBER</b>	108509, 101515
<b>ATTACHMENT</b>	Attachment 1 Draft <i>Attendance at Events Policy</i> .
<b>AUTHORITY / DISCRETION</b>	Legislative - includes the adoption of local laws, planning schemes and policies.

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**PURPOSE**

For Council to adopt a new *Attendance at Events Policy*.

**EXECUTIVE SUMMARY**

On 20 October 2019 the *Local Government Legislation Amendment Act 2019* came into operation that introduced a range of amendments to the *Local Government Act 1995*. Several of these amendments related to introducing a new gifts framework for elected members and the Chief Executive Officer.

Due to these changes, local governments must also prepare and adopt a policy that relates to the attendance of elected members and Chief Executive Officers at events such as concerts, conferences and functions. The policy must address the provision of tickets to events; payments in respect of attendance and approval of attendance by the local government; and the criteria for approval.

In view of this, a new *Attendance at Events Policy* has been developed to address the new legislative requirements which also extends to the City's employees, not just elected members and the Chief Executive Officer.

*It is therefore recommended that Council ADOPTS the Attendance at Events Policy, as detailed in Attachment 1 to this Report.*

**BACKGROUND**

In 2017 the State Government announced a review of the *Local Government Act 1995* (the Act) which is the first significant reform of local government conducted in more than two decades. The objective of the review, conducted in phases, is for Western Australia to have a new, modern Act that empowers local governments to better deliver for their communities.

As a result of the consultation undertaken as part of phase one of the review, the *Local Government Legislation Amendment Act 2019* came into operation on 20 October 2019 that introduced a range of amendments to the *Local Government Act 1995*. Several of these amendments related to introducing a new gifts framework for elected members and the Chief Executive Officer, as well as the need for local governments to develop an attendance at events policy.

Given the important role elected members and many local government employees as decision makers in positions of power, the new framework is purported to reflect the community's expectations that decision makers in local government are free from improper influence. This new framework has introduced new gift disclosure requirements for elected members and Chief Executive Officers, both generally and at meetings, as well as the need for local governments to prepare and adopt a policy that relates to the attendance on elected members and Chief Executive Officer at events, such as concerts, conferences and functions.

The new section 5.90A of the Act that relates to the need for a policy is detailed as follows:

**“5.90A. Policy for attendance at events**

(1) *In this section —*

**event** *includes the following —*

- (a) *a concert;*
- (b) *a conference;*
- (c) *a function;*
- (d) *a sporting event;*
- (e) *an occasion of a kind prescribed for the purposes of this definition.*

(2) *A local government must prepare and adopt\* a policy that deals with matters relating to the attendance of council members and the CEO at events, including —*

- (a) *the provision of tickets to events; and*
- (b) *payments in respect of attendance; and*
- (c) *approval of attendance by the local government and criteria for approval; and*
- (d) *any prescribed matter.*

*\* Absolute majority required.*

(3) *A local government may amend\* the policy.*

*\* Absolute majority required.*

(4) *When preparing the policy or an amendment to the policy, the local government must comply with any prescribed requirements relating to the form or content of a policy under this section.*

(5) *The CEO must publish an up-to-date version of the policy on the local government's official website.”*

In the main, a gift or ticket to, or that otherwise relates to a person's attendance at, an event that is in accordance with the policy will be exempt from the new conflict of interest provisions at meetings, that have also been introduced. As per the new requirements of the Act the Elected Member (or Chief Executive Officer) who accepts a ticket under the new policy will not be required to disclose the interest at a meeting where the donor has a matter before Council and will be able to participate in the decision-making process (or the provision of advice to Council for the Chief Executive Officer).

As the new legislative provisions have introduced a mandatory requirement for local governments to adopt a policy, a new policy has been developed for Council's consideration.

## DETAILS

The new requirements within the Act state that the policy must deal with matters relating to the attendance of elected members and the Chief Executive Officer at events, including:

- (a) the provision of tickets to events
- (b) payments in respect of attendance
- (c) approval of attendance by the local government and criteria for approval
- (d) any prescribed matter (currently none are stipulated in the *Local Government (Administration) Regulations 1996*).

In view of this the policy could include matters such as:

- who invitations are to be directed to
- who authorises attendance at an event, including how the decision is made for an elected member or Chief Executive Officer to attend an event
- how many people are authorised to attend an event
- who is responsible for the cost of attending (if any), including whether there is a requirement for the elected member or Chief Executive Officer to contribute to the cost, particularly if the person's partner is attending
- whether there are any pre-authorised events
- whether the location of the event is within the district
- attendance at sponsored events
- attendance at events that are outside the policy.

In a legislative sense, the acceptance of a ticket to an event could be considered a 'gift' as per the definition under the Act. However, one of the difficulties presented to local governments is the highly legalistic definition of a "gift" under the Act, and the way that it applies to elected members and employees in terms of disclosure requirements and the application of the requirements under the new policy. As per section 5.57 of the Act, a gift is defined in the following way:

**"gift means:**

- (a) *a conferral of a financial benefit (including a disposition of property) made by 1 person in favour of another person unless adequate consideration in money or money's worth passes from the person in whose favour the conferral is made to the person who makes the conferral; or*
- (b) *a travel contribution."*

In essence a 'gift', has three components:

- 1 Any disposition of property, or the conferral of any other financial benefit.
- 2 Made by one person in favour of another.
- 3 Without 'adequate' consideration passing from the recipient to the donor.

In the definition of 'gift', while the first two components above are relatively easy to determine, the third component of consideration is an important and crucial concept in terms of whether something is a gift or not. In plain terms consideration is 'something of value' to a person.

With any gift therefore it is necessary to assess:

- 1 the value of the gift received by the Elected Member or employee
- 2 the value of any consideration, if any, passing from that Elected Member or employee to the person (or organisation) providing the gift.

There are often significant practical difficulties in determining each of those two values. However, if the value of the second outweighs the value of the first, it is not deemed a gift. This is an important concept in terms of where an elected member accepts a ticket and is performing their role at an event as a community representative (such as where they may network and liaise with community individuals / groups within the district). Clarification within the policy has been attempted in circumstances where the attendance at an event by an Elected Member would be seen to be in the fulfilment of their role as an Elected Member.

In view of this, the draft *Attendance at Events Policy* (detailed as Attachment 1) has been developed to account the above matters and those requirements under the Act, the details and reasoning behind its structure is as follows:

### Application

Although the legislation prescribes the policy only relates to elected members and the Chief Executive Officer, the draft policy will also apply to all employees at the City. Tickets to events are offered across the organisation in a range of circumstances and therefore, any provisions that are required of elected members and the Chief Executive Officer, should also apply to employees.

### Definitions

To aid in the understanding of the policy, a list of definitions has been included which draws on the legislative definitions of both an 'event' (as provided by in section 5.90A of the Act) and 'gift' (as provided by section 5.57 of the Act). As stated above, it is important to recognise that a ticket to an event may be considered a 'gift' for the purposes of the legislation and the City's *Code of Conduct* and therefore gift disclosure requirements, or indeed restrictions for employees, may apply.

In the absence of a legislated definition, the policy has also defined a 'ticket' to include an admission ticket to an event, or an invitation to attend an event, or a complimentary registration to an event, that is offered by a third party. It is generally felt that these situations would constitute a ticket for the purposes and intent of the legislation.

### Statement

The statement introduces some background information to aid in the understanding of the policy, but in the main reflects that the policy has been created to comply with the requirements of section 5.90A of the Act.

### Pre-approved events

Section 5.90A of the Act requires the policy to include the approval of attendance at an event and the criteria for that approval. Instead of requiring approval to attend an event under every circumstance that is likely to occur throughout the City, the policy has been drafted to include a range or pre-approved events in which an Elected Member, Chief Executive Officer, or employee can attend automatically.

Firstly, it is recommended attendance is automatically approved where the person has an official role or acting in an official capacity, such as:

- performing a speaking role or some other welcoming role
- participating as a member of a discussion panel or judging panel
- presenting at the event as part of the event program
- representing the City of Joondalup at a sponsorship acknowledgement event or award ceremony, where the primary purpose of attendance is not for the entertainment of the individual Elected Member or employee, but enable the City to fulfil its role, and exercise its rights and benefits, as a sponsor
- presenting awards or prizes to others on behalf of the City
- attending an exhibition or display where the City, its programs or services are being showcased at the event.

In such situations, it is likely the role performed by the person could be deemed as being fully adequate consideration against the value of the ticket offered, and therefore would not be deemed a gift for the purposes of the legislation or the City's *Code of Conduct*. However, the person would still need to make such an assessment to ensure compliance with the gift disclosure requirements or seek further advice from the City's administration.

There are also a range of third parties that have significant interest in the role of local governments or the City's activities specifically, and it is therefore suggested that tickets offered by the following third parties be considered as pre-approved events also:

- The Western Australian Local Government Association.
- The Australian Local Government Association.
- Local Government Professionals WA.
- A department of the Public Service.
- A government department of another State, a Territory or Commonwealth.
- A State or Federal Member of Parliament, other than for party political events or fundraisers.
- A local government or regional local government.
- Major professional or industry association(s) relevant to local government activities.
- A stakeholder partner of the City.
- A civic / cultural / community organisation within the City of Joondalup.
- Educational institutions.
- A not-for profit organisation.

### Non-approved events

It is recommended the above "pre-approved events", only relate to those events being held within the Perth Metropolitan area under those circumstances, as it is likely, more often than not, that events may be held outside of the City's boundaries.

The Perth Metropolitan area has also been suggested as an automatic right as any events outside this area may require additional costs associated with attendance, such as accommodation or other travel expenses, and therefore some level of approval should be required in such instances.

In this regard, it is suggested where a ticket to an event is not a pre-approved event, approval from the Chief Executive Officer (or the Mayor for the Chief Executive Officer) is required based on a set of criteria, such as:

- (a) who is providing the ticket to the event (the organiser of the event, or a third party)
- (b) the location of the event in relation to the City's district
- (c) the role of the Elected Member or employee when attending the event (that is presenter, participant or observer)
- (d) whether the event is sponsored by the City
- (e) the Elected Member's or employee's justification of the benefit to the City and the City's community through the attendance at the event
- (f) how many people should be authorised to attend the event
- (g) any costs associated in attending the event
- (h) whether advice following the attendance at the event is required.

To support transparency and accountability, it is also recommended advice on the outcomes of the attendance be provided to the Chief Executive Officer, when deemed necessary. Such advice may include:

- the nature of the event
- the stated benefits to the City or the Joondalup community in attending the event
- what the elected member or employee observed by attending the event
- any networking links that were made or stakeholder interactions
- how attendance benefited the elected member's or employee's role at the City generally.

Such reporting was a recommendation with the 2015 Public Sector Commission's investigation in to the gifts and hospitality benefits at Healthways, and the City should consider such recommendations in drafting its governance approach towards the acceptance of tickets to events.

#### Free tickets to the City for events

Although not a common occurrence, the City itself may receive tickets from third parties to attend events. It is suggested that such situations be included in the policy with the provision that the Chief Executive Officer will distribute such tickets as he / she thinks fit and if attendance is deemed to satisfy the approval criteria detailed within the policy. Distribution could also include to the community as part of giveaways or prize draws the City may undertake from time to time.

One of the major difficulties in terms of such tickets being supplied to the City and then passed on to an Elected Member, is that a local government is prohibited, under section 5.100A of the Act, from giving to an Elected Member any gift (of any value), unless in the prescribed circumstances set out in regulations 34AC of the *Local Government (Administration) Regulations 1996* (that is on the occasion of an Elected Member's retirement).

However if an Elected Member is allocated a ticket on the basis that attendance would enable the Elected Member to perform their role as a community representative and to network and liaise with community individuals / groups within the district, it is likely and reasonable to conclude that fully adequate consideration would pass from the Elected Member to the City (which gave the ticket to the Elected Member) and would not be considered a gift for the purposes of the legislation, and therefore would not result in a legislative breach occurring.

Internal procedural matters have been implemented to ensure that where tickets are given to the City and then passed onto elected members, it is only done in the circumstances that attendance of the Elected Member would facilitate them in perform their role as a community representative.

#### Complimentary tickets and benefits under sponsorship agreements

There are a number of long-standing agreements the City has entered into with third parties, such as the West Perth Football Club, the Joondalup Wolves Basketball Association, the Mullaloo Surf Lifesaving Club and the Sorrento Surf Lifesaving Club where each organisation receives a financial contribution from the City in return for a range of benefits. The benefits to the City include, but are not limited to:

- invitations to sponsor recognition events and corporate functions (such as annual dinners)
- exclusive use of a dedicated corporate box during home games
- complimentary tickets to home games to be used by the City for community prizes and give-aways.

The benefits listed above are generally supplied to the City or specifically identified to a person (such as the Mayor), in which the Chief Executive Officer in turn allocates those tickets or benefits to elected members or another employee(s). In most instances the attending person is not required to perform any formal function while attending the event, although they may engage in networking activities with other attendees or invited guests. In some instances where the Mayor is invited to attend sponsor recognition events and club annual dinners, they may be required to present awards or other forms of recognition.

It may be argued that when an Elected Member or employee attends club events or functions they may in fact be contributing 'consideration' by their efforts (such as giving a speech or presenting awards). In this instance such invitations may no longer be considered a gift if full consideration has passed between the Elected Member (or employee) and the third party (that is the value put on their efforts outweighs the total cost of the ticket and benefits). However, the same situation may not apply to an Elected Member or employee attending an event which may or may not have some quantifiable value of consideration. If full consideration does not pass between the recipient (being an elected member or employee) and the donor (the sponsored organisation) its value would be considered a gift.

Due to the complexity around the gift provisions and the definition of a gift under the Act, legal advice has previously suggested there are strong policy grounds to support the approach of confining the City's future sponsorship agreements to financial and in-kind sponsorship, and in return publicity, branding or acknowledgement of the City's sponsorship, by the sponsored organisation.

However such advice also concluded that there is no legal prohibition against a sponsorship agreement providing benefits to be given by the sponsored organisation to individual elected members or employees (either directly or through the City) and that arrangements should be put in place by the City to enable the Mayor, and also councillors and employees, to attend functions and events of the sponsored organisation where the purpose, or at least the primary purpose, of attendance is not for the entertainment of the individual Elected Member or employee, but to enable the City to fulfil its role, and exercise its rights and benefits, as a sponsor.

In view of this the policy suggests where a complimentary ticket or benefit is provided under a current sponsorship agreement or arrangement, the management and allocation of the ticket or benefit (unless expressly stated) shall be determined by the Chief Executive Officer. The provision also clarifies that the allocation of tickets or benefits to an Elected Member is on the basis that attendance would enable the Elected Member to perform their role as a community representative. This again reiterates that the City, cannot give a gift to an Elected Member, under section 5.100A of the Act, unless fully adequate consideration by the Elected Member passes from the Elected Member to the City (or a third party) and therefore not considered a gift.

#### Costs for tickets

It is recommended in the policy where there is a cost associated with a ticket, then the costs be either paid or reimbursed to the Elected Member or employees. Reimbursements for elected members would utilise the provisions within the *Elected Members' Entitlements Policy* whereas adequate funding within the City's annual budget would be required for employees.

There may be other events that arise that in the Chief Executive Officer's opinion, it is in the interests of the City for one or more elected members or employees to attend a non-approved event at a cost, in order to assess and understand any possible impacts on the Joondalup community or the City's business activities. Such situations may include attending acts or performances to assess the suitability for inclusion in the City's cultural program of events.

In this regard it is suggested in the Chief Executive Officer's opinion that attendance is of benefit to the City and the Joondalup community, the City pay the full price for a ticket for an Elected Member(s) or employee(s) to attend.

#### Travel and accommodation costs

As per the City's *Elected Members' Entitlements Policy* and the City's internal protocols for employees, reasonable travel and accommodation costs will be paid by the City when attending conferences and training events. In this regard the policy reflects travel costs (that is mileage) will be paid in accordance with the levels set within the *Local Government (Western Australia) Interim Award 2011* and a per the *Elected Members' Entitlements Policy* and internal protocols.

It is also recommended that the City consider the payment of any accommodation costs (and travel expenses) where the event occurs outside of the Perth Metropolitan area. Any costs will only be reimbursed on the provision of documentary evidence in the form of tax invoices or receipts.

### Exemptions

One of the complexities associated with the new provisions introduced in the Act, is that the definition of an “event” includes conferences. Elected Members and employees are entitled to attend conferences and training events to further their professional development and provisions are already in place under the *Elected Members’ Entitlements Policy* and internal protocols for employees. It is therefore suggested the policy provisions be excluded to apply to conferences and training events that are covered under other approved documents of the City.

It is also recommended that the policy does not apply where an Elected Member or employee is the City’s representative on a board or external organisation where the Elected Member or employee is required to attend an event for the purposes of fulfilling their role on the board or external organisation.

### Disclosure requirements relating to tickets

In accordance with the section 5.62(1B) of the Act attendance at an event in accordance with this policy will exclude the Elected Member from the requirement to disclose an interest when the donor of the ticket has a matter before Council (or a committee). However elected members and employees still have gift disclosure requirements under the Act and *Code of Conduct* respectively.

In view of this, the policy reflects even though elected members are exempt from disclosing interests relating to gifts at meetings, elected members and employees still have gift disclosure requirements under sections 5.87A – 5.87C of the Act (for elected members and the Chief Executive Officer) and the City’s *Code of Conduct* (for employees). Disclosure needs to be made to the Chief Executive Officer (or Mayor if it is the Chief Executive Officer) within 10 days of receiving the ticket (which is deemed a gift), and certain information is to be disclosed.

To add further complications for the policy, City employees are currently restricted in accepting gifts of a certain value under the City’s *Code of Conduct*. In this regard employees must also adhere to the *Code of Conduct* provisions in relation to the acceptance of tickets, that could be deemed a gift, and a provision along these lines has been included in the policy. Due to the recent changes to the Act, the notifiable and prohibited gift limits that used to apply to elected members under the *Local Government (Rules of Conduct) Regulations 2007* have been removed, and therefore no longer apply, meaning elected members are no longer restricted by any gift limits.

### Reporting

Under the Act and the *Code of Conduct*, gifts are to be recorded in a number of registers that are maintained by the City. Where a ticket is deemed a gift it must be recorded in one of these registers and the policy reflects this requirement.

The policy also touches on the legislative provision that attendance at an event in accordance with this policy will exclude the Elected Member from the requirement to disclose an interest when the donor of the ticket has a matter before Council (or a committee).

**Issues and options considered**

Council can either:

- adopt the new *Attendance at Events Policy* as presented
- adopt the new *Attendance at Events Policy* with further amendments  
or
- not adopt the new *Attendance at Events Policy*.

**Legislation / Strategic Community Plan / policy implications****Legislation**

*Local Government Act 1995.*  
*Local Government (Rules of Conduct) Regulations 2007.*  
*Local Government (Administration) Regulations 1996.*  
*City of Joondalup Code of Conduct for Employees, Elected Members and Committee Members.*

**Strategic Community Plan****Key theme**

Governance and Leadership.

**Objective**

Corporate capacity.

**Strategic initiative**

Maintain a highly skilled and effective workforce.

**Policy**

*Elected Members' Entitlements Policy.*

**Risk management considerations**

All Western Australian local governments are required to adopt a policy around the attendance of elected members and the Chief Executive Officer at events. Failure for the City to adopt a policy would put the City in breach of its legislative obligations.

**Financial/budget implications**

There are no financial implications associated with the adoption of a new policy.

**Regional significance**

Not applicable.

**Sustainability implications**

Not applicable.

**Consultation**

Not applicable.

## COMMENT

Due to the nature of a local government's business, elected members and employees deal regularly with third parties and from time to time may be offered tickets to attend events. The City acknowledges the acceptance of tickets, and therefore attendance at events, can provide opportunity to work and network with stakeholders to legitimately further the interests of the City or the Joondalup community.

To ensure the City is carrying out its functions impartially, elected members and employees must be able to demonstrate they are not improperly influenced by third parties through the acceptance of tickets to events. It is therefore important for the City to manage any real or perceived conflicts of interest in terms of decision-making undertaken by elected members (when meeting as a Council) or employees, when tickets are accepted and used.

The policy provides a framework for the acceptance of tickets to events by elected members and employees and to actively consider the purpose of, and benefits to, the community in attending. It also details what disclosure requirements are needed when attending events by elected members and employees and a range of other governance arrangements when attending events.

It is clear one objective of the new legislative requirements for a local government to have an attendance at events policy, is to ensure that there is greater transparency related to events attended by elected members and the Chief Executive Officer, including the approval process for attendance at those events. Another clear objective is to enable elected members and the Chief Executive Officer to participate in Council decision-making processes where their participation would, or might, otherwise be prohibited or restricted as a result of attending an event in respect of they would be taken to have received a 'gift' (such as the value of any ticket to attend and the value of any hospitality provided at the event).

Notwithstanding, the new gift framework under the Act is indeed complex, and to some extent more burdensome and more difficult to administer than what was previously in place. Notwithstanding the new policy developed for Council's consideration attempts to balance the requirements of the legislation and the proper and orderly function of the City and the various components within it.

## VOTING REQUIREMENTS

Absolute Majority.

*Cr May entered the electronic meeting at 5.59pm.*

## OFFICER'S RECOMMENDATION

That Council BY AN ABSOLUTE MAJORITY ADOPTS the *Attendance at Events Policy* as detailed in Attachment 1 to this Report.

**MOVED** Cr Fishwick, **SECONDED** Cr Hollywood that Council **BY AN ABSOLUTE MAJORITY ADOPTS** the *Attendance at Events Policy* as detailed in Attachment 1 to this Report, subject to:

- 1 including definitions for “Chief Executive Officer” and “City” in clause 2;
- 2 removing the numbering for sub-clause 4.1;
- 3 deleting “WA” from the reference “Local Government Professionals WA” in clause 4;
- 4 improving the formatting of the policy in terms of numbering bullet points with roman numerals;
- 5 including the words “Subject to the approval of the Chief Executive Officer” at the commencement of clause 8.3;
- 6 including the words “whereby an Elected Member or employee uses their own vehicle on official business” after “City” in clause 9.2;
- 7 replacing the words “clause 54 of the *Public Services Officers Award 1992*” with “clause 29 of the *Local Government Officers (Western Australian) Interim Award 2011*, and subject to the approval of the Chief Executive Officer” in clause 9.3.

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Cr Hamilton-Prime, Mayor Jacob, Crs Chester, Fishwick, Hollywood, Jones and May.

*Appendix 1 refers*

To access this attachment on electronic document, click here: [Attach1agnPOLICY200504.pdf](#)

**ITEM 2                    ELECTION SIGNS IN CITY ROAD RESERVES**

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<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Jamie Parry Governance and Strategy
<b>FILE NUMBER</b>	22513, 101515
<b>ATTACHMENT</b>	Attachment 1    Election Signs Fact Sheet
<b>AUTHORITY / DISCRETION</b>	Information - includes items provided to Council for information purposes only that do not require a decision of Council (that is for 'noting').

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**PURPOSE**

For the Policy Committee to note the background regarding election signs in City thoroughfares and road verges and future arrangements that will be put in place.

**EXECUTIVE SUMMARY**

The October 2019 local government election introduced a new permit process around the installation of temporary elections signs in road reserves throughout the City of Joondalup. Prior to the 2019 local government elections, the City maintained a position that elections signs in federal, state or local government elections could not be placed in a thoroughfare or on a road verge, however candidates were free to place certain election signs on private property.

At the Annual General Meeting of Electors held on 10 December 2019, an elector's motion was passed calling on Council to roll back the *Local Government and Public Property Local Law 2014* to disallow election signage on road verges or Council or public property for any government elections in the future.

In considering this motion and subsequent officer advice, Council at its meeting held on 18 February 2020 (Item CJ008-02/20 refers) resolved not to support the *Local Government and Public Property Local Law 2014* being amended to disallow election signs being erected on local government property, but nonetheless requested the *Local Government and Public Property Local Law 2014* be referred to the Policy Committee to review the protocols for the provision of election signs being erected on local government property.

This report details the matters to be considered in terms of temporary election signs being placed in thoroughfares and road verges throughout the City of Joondalup, and the possible improvements that can be put in place for future federal, state and local government elections.

## BACKGROUND

As per the information provided to Council at its meeting held on 18 February 2020 (Item CJ008-02/20 refers), the City's *Local Government and Public Property Local Law 2014* states the following provisions around election signs:

### 9.2 General prohibitions

*Subject to the exceptions in clauses 9.3 to 9.6 inclusive, a person must not –*

- (a) erect or place an advertising sign on a thoroughfare or verge; or*
- (b) post any bill or paint, place or affix any advertisement on a thoroughfare or verge,*  
*unless permitted to do so under any written law.*

For the purposes of the local law:

- **advertising sign** means a sign used for the purpose of an advertisement or to draw attention to a product, business, person or event, and includes an election sign
- **election sign** means a sign which encourages persons to vote for a candidate, political party, referenda or matter relating to any federal, state or local government election.

The above provision stipulates election signs cannot be erected or placed in a thoroughfare or verge unless permitted to do so under any written law.

However, in reviewing the legality of the above provision, there has been a series of cases, the earliest commencing in 1992, where the High Court of Australia has ruled that there is an implied freedom of communication on matters of government and political concern. The freedom protected by the Constitution is not a freedom to communicate, but a freedom from laws that effectively prevent members of the Australian community from communicating with each other about political and government matters relevant to the system of representative and responsible government by the Constitution.

The implied constitutional freedom of political communication principles apply also to the erection of election and political signs on public property, including local government property, as defined in the *Local Government Act 1995*. That is, where a local government regulates signs on local government property under local laws and policies made by those local laws.

Among the principles established by the courts in applying tests to review the constitutional validity of local government local laws regulating election and political signs, in part, are:

- 1 a law imposing a 'blanket prohibition' on election and political signs, even with limited exceptions, is very likely to be an impermissible interference with the constitutional freedom of political communication and, therefore, invalid
- 2 a law that singles out election or political signs for adverse treatment is also likely to be invalid.

In view of the above, a law or action which restricts or prevents political or election signs (such as the making or administration of a local law or planning policy) would undoubtedly be regarded by a court as constituting a burden on the freedom of political communication. Legal advice has concluded that any regulation (including the creation of a local law) restricting the placement of advertising of a political nature, other than a general restriction applicable to all advertising for the purposes of public safety and amenity, would most unlikely to survive a legal challenge. Although the City has restriction provisions in the City's *Local Government and Public Property Local Law 2014*, enforcing those provisions are likely to be contrary to the implied freedom detailed under the Australian Constitution and therefore should not be enforced to avoid possible legal challenges and reputational risk to the City.

Following legal advice received in July 2019 around the implied freedom of political communication afforded in the Australian Constitution, the placement of election signs in thoroughfares and road verges was permitted for the first time during the 2019 local government elections, along the same lines and permit conditions as other temporary community information signs that are allowed by the City.

Details of the permit conditions are included in Attachment 1 to this Report and are similar to the conditions that are placed on community groups and sporting organisations when installing temporary community information signs in road reserves throughout the City of Joondalup. Such standards for election signs were implemented to ensure the City could successfully demonstrate that it was not bias towards election candidates or restricting candidates from politically communicating with the electorate; or different to the standards set for other organisations or groups when using the City's thoroughfares and road reserves for temporary advertising purposes. These same standards were implemented to ensure the City was satisfying the two tests of validity detailed above.

A number of local governments throughout Western Australia (such as the Cities of Stirling, Fremantle and Swan) allow temporary election signs being placed in thoroughfares and road verges throughout their respective districts, whereas others (such as the Cities of Wanneroo and Greater Geraldton) continue to prohibit such signs being erected. Some local government associations (such as the Local Government Association of South Australia) has issued general approval guidelines relating to election signs for federal, state and local government elections and the Western Australian Local Government Association has released a *Political Signage Guideline* which generally relates to election signs on private property. Main Roads WA has also issued a set of standards regarding elections signs placed in road reserves that it manages (such as Marmion Avenue and the Mitchell Freeway). In the main, although some local governments are continuing to prohibit election signs from being placed in thoroughfares and road verges, legal advice and a level or agreement across local governments has demonstrated election signs in thoroughfares and road verges should be allowed by local governments going forward under certain conditions.

Notwithstanding, there were a series of issues and concerns expressed by some candidates and a small number of the public around election signs and the City's election signs process during the October 2019 local government elections. Such complaints included, but were not limited to:

- the lack of appropriate authorisation on election material (which includes signs) as required by the *Local Government Act 1995*
- the excessive number of election signs being placed in thoroughfares and road verges
- the size of signs
- the size and type of wording displayed on elections signs or the method of signs being displayed
- signs being placed too close to intersections, footpaths or kerb lines or causing a distraction or obstruction for road users and / or pedestrians

- alleged theft or vandalism of signs by candidates and/or other members of the community
- allegations of favouritism for some candidates over others
- the inadequacy of the permit system implemented by the City
- a perceived lack of action in resolving complaints in a timely manner.

In view of this, the City is reviewing its election signs process to make improvements, not only for candidates and members of the community, but also ensuring a reasonable enforcement regime continues to be implemented by the City. It should be noted that such changes and standards would apply for federal, state and local government elections.

## DETAILS

In general terms, the restrictions and criteria for election signs being placed in local government's road reserves, are based around the following criteria:

- Reasonable size.
- Reasonable time for the duration of display.
- Minimising possible restrictions around the use of roads and thoroughfares.
- Minimising danger to the safety of road users, pedestrians and member of the public.
- Appropriate authorisation in terms of any relevant electoral provisions.

The standards implemented by various local governments for the above criteria do vary between local governments. In view of the issues faced during the 2019 local government election, it is suggested the City's standards going forward should primarily focus on minimising danger to the safety of road users, pedestrians and members of the public, rather than the number of signs; standards of wording, and information displayed.

In view of this, the following revised standards are suggested to apply to election signs going forward:

2019 Standards	Revised Standards
<ul style="list-style-type: none"> <li>• No current definition exists.</li> <li>• Application has to be made to the City to erect election signs in road reserves.</li> <li>• \$30.00 application fee applies.</li> <li>• A maximum of 15 signs can be displayed at any one time.</li> <li>• A sign cannot exceed 0.75 square metres in area.</li> <li>• All lettering and numbering on signs must be a minimum height of 50mm and a maximum height of 100mm.</li> <li>• An approved Temporary Advertising Sign sticker, as supplied by the City, is to be affixed to the top right-hand corner of each sign.</li> <li>• Signs cannot be placed more than 37 days prior to the federal, state or local government election to which the sign relates.</li> </ul>	<ul style="list-style-type: none"> <li>• Include a definition of thoroughfare as some confusion could be apparent about its meaning.</li> <li>• No application is required.</li> <li>• No application fee is required.</li> <li>• No maximum limit of signs that can be displayed at any one time.</li> <li>• A sign cannot exceed 0.75 square metre in area.</li> <li>• No standards will apply to minimum and maximum height of lettering.</li> <li>• No Temporary Advertising Sign sticker is required.</li> <li>• Signs cannot be placed more than 30 days prior to the federal, state or local government election to which the sign relates.</li> </ul>

2019 Standards	Revised Standards
<ul style="list-style-type: none"> <li>• Signs cannot be erected on, or in front of, private property unless the approval of the owner of the property is obtained prior to the erection of the sign.</li> <li>• The person shall not erect or maintain a sign so as to obstruct the view from a street or public place of traffic in a street or public place.</li> <li>• They are not erected within 50 metres of any thoroughfare, intersection or junction and are at least two metres from the kerb line, or outer edge of the road shoulder on un-kerbed sections of the road.</li> <li>• They are not located within a traffic island or the median.</li> <li>• They are freestanding and therefore, not attached to any structure, post or tree.</li> <li>• A-frame signs are not permitted.</li> <li>• Signs within a road reserve may result in the applicant being liable in respect of any claims arising from the action.</li> <li>• Signs are to be removed within seven days after the election to which the sign relates.</li> </ul>	<ul style="list-style-type: none"> <li>• Signs cannot be erected on, or in front of, private property unless the approval of the owner of the property is obtained prior to the erection of the sign.</li> <li>• The person shall not erect or maintain a sign so as to obstruct the view from a street or public place of traffic in a street or public place.</li> <li>• They are not erected within 50 metres of any other thoroughfare's intersection or junction and are at least two metres from the kerb line, or outer edge of the road shoulder on un-kerbed sections of the road.</li> <li>• They are not located within a traffic island or the median.</li> <li>• They are freestanding and therefore, not attached to any structure, post or tree.</li> <li>• A-frame signs are not permitted.</li> <li>• Signs within a road reserve may result in the applicant being liable in respect of any claims arising from the action.</li> <li>• Signs are to be removed within seven days after the election to which the sign relates.</li> </ul>

It should be noted that information displayed on election signs (such as wording or candidate claims) is not a matter for the local government, but for the Returning Officer who is ultimately responsible for the conduct of the election and activities surrounding it under the *Local Government Act 1995* and the *Local Government (Elections) Regulations 1997*. This includes breaches or possible breaches of section 4.87 of the Act (printing and publications of electoral material) or section 4.88 of the Act (printing, publishing or distributing misleading or deceptive material). Such complaints should continue to be forwarded to the City's Returning Officer, who is currently appointed by the Western Australian Electoral Commission, which manages the City's elections on its behalf.

### Issues and options considered

The Policy Committee can either:

- note the information detailed in the report with the understanding that the City's administration will implement a revised regime in terms of election signs in thoroughfares and road verges  
or
- provide further comment in terms of acceptability of elections signs in thoroughfares and road verges.

**Legislation / Strategic Community Plan / policy implications****Legislation**

*Local Government Act 1995.  
Local Government (Elections) Regulations 1997.  
Local Government (Rules of Conduct) Regulations 2007.  
Local Government and Public Property Local Law 2014.*

**Strategic Community Plan****Key theme**

Governance and Leadership.

**Objective**

Effective Representation.

**Strategic initiative**

Attract a diverse elected body that represents, promotes and reflects the composition of the community.

**Policy**

Not applicable.

**Risk management considerations**

Limiting or not permitting election signs from being placed in City thoroughfares or road reserves could see the City open for a legal challenge against a breach of the Australian Constitution in terms of the implied freedom of political communication.

**Financial/budget implications**

There are no financial implications associated with this report other than costs providing in operational budgets in relation to the management and enforcement of all aspects of the City's election process.

**Regional significance**

Not applicable.

**Sustainability implications**

Not applicable.

**Consultation**

Not applicable.

**COMMENT**

The local government electoral process is the most significant local government activity undertaken which has the potential to call into question political neutrality and perceptions of bias. The City endeavours to maintain this level of neutrality and impartiality by implementing processes and advice that is consistently communicated to candidates and across the community.

It is clear from the recent experience around elections signs that there is a significant number of complaints around election signs, which ultimately needs to be investigated on balance with other enforcement activities the City is required to undertake at the time. In this regard any investigation of complaints about election signs will be managed as resources allow.

As the City's Chief Executive Officer is responsible for the administering of the City's local laws, and although there are differing standards between local governments, the revised standards for the City of Joondalup are considered suitable to gain that balance between election activity; road safety concerns; administrative resourcing; and enforcement capability.

## **VOTING REQUIREMENTS**

Simple Majority.

*Cr Poliwka left the electronic meeting at 6.40pm and returned at 6.41pm.*

## **OFFICER'S RECOMMENDATION**

That the Policy Committee NOTES the revised process relating to election signs being placed in thoroughfares and road reserves throughout the City's district.

**MOVED Cr Fishwick, SECONDED Cr Hollywood that "Item 2 – Election Signs in City Road Reserves" BE DEFERRED to a Strategy Session of Elected Members to allow the standards to be further workshopped and to allow the Chief Executive Officer to provide information around the public liability aspects of placing election signs within City road reserves.**

**The Motion was Put and**

**CARRIED (6/1)**

**In favour of the Motion:** Cr Hamilton-Prime, Mayor Jacob, Crs Fishwick, Hollywood, Jones and May.

**Against the Motion:** Cr Chester.

*Appendix 2 refers*

*To access this attachment on electronic document, click here: [Attach2agnPOLICY200504.pdf](#)*



- how correspondence of the Mayor and Councillors is to be treated
- electronic correspondence for Elected Members and the use of information technology supplied by the City
- access to information held by the City.

The policy has been reviewed over time and was last reviewed by Council at its meeting held on 20 March 2012 (Item CJ032-03/12 refers) as part of the City's broader review of its policy framework and manual. The review included incorporating Elected Member communication matters detailed in other policies into one succinct policy, as well as some other minor amendments.

At the Policy Committee meeting held on 24 February 2020 a request for a report was made regarding the policy provisions in place in relation to "ward surgeries". The term "ward surgery" is a historical term used and generally refers to external ward meetings that are held externally by elected members throughout the community. In the main, the policy provides for matters allowing elected members to meet with electors and residents in their Ward, and the various administrative arrangements that are in place to facilitate such meetings.

## DETAILS

In view of the request made at the Policy Committee meeting held on 24 February 2020, amendments are suggested to section 3.6 of the policy. In the main the changes include the following:

- Rewording the section from "Elected Member Availability" to "Ward Meetings" to better reflect an understanding of the provisions within the section.
- Provide that three external Ward meetings are available per Ward each financial year, for the respective Ward Councillors and the Mayor to meet with members of the public in that Ward. This would allow a fair opportunity for the Mayor and each Ward Councillor to select a time and meeting place that may be conducive to the desires of each respective Elected Member. The current policy provision currently allows six in total, being one for each Ward.
- Remove the need for budget provisions for local newspaper advertisements and reflect such meetings will be communicated through the City's relevant social media platform, website and *Joondalup Voice* insert. Such changes will minimise operational costs for the placement of advertising, which is currently around \$350 per *Joondalup Times* advert. Notwithstanding effective communication will still occur, considering the City currently has over 38,500 followers on its Facebook site and targeted / boosted Facebook feeds can be accommodated for a fraction of the cost of traditional advertising mediums.
- In view of the intent within the City's *Elections Caretaker Policy*, highlight ward meetings will not be arranged within three months of a local government election day. This will minimise any criticism or perception that elected members may be using City resources for election purposes.

The revised policy is detailed in Attachment 1 to this Report.

**Issues and options considered**

Council can either:

- adopt the revised *Elected Members Communications Policy* as presented
- adopt the revised *Elected Members Communications Policy* with further amendments or
- not adopt the revised *Elected Members Communications Policy*.

**Legislation / Strategic Community Plan / policy implications****Legislation**

*Local Government Act 1995.*  
*Local Government (Rules of Conduct) Regulations 2007.*  
*State Records Act 2000.*  
*Freedom of Information Act 1992.*  
*City of Joondalup Code of Conduct for Employees, Elected Members and Committee Members.*

**Strategic Community Plan****Key theme**

Governance and Leadership.

**Objective**

Effective Representation.

**Strategic initiative**

Ensure the elected body has a comprehensive understanding of its roles and responsibilities.

**Policy**

*Elected Members Communications Policy.*  
*Records Management Policy.*  
*Elections Caretaker Policy.*

**Risk management considerations**

Should effective and detailed communication arrangements not be specified for elected members, there could be risk associated with elected members contravening legislative provisions around their conduct.

**Financial/budget implications**

There are no financial implications associated with the adoption of the revised policy. Any costs associated with the new ward meeting arrangements can be accommodated in existing operational budgets.

**Regional significance**

Not applicable.

**Sustainability implications**

Not applicable.

**Consultation**

Not applicable.

**COMMENT**

Members of the public are not prevented from interacting with the City's administration, elected members, or the Council (through the public interaction mechanisms afforded to them at Briefing Sessions and Council meetings) should they have concern with a particular issue or activity of the local government. Local governments continually engage with their communities through various consultation and engagement processes where members of the community can also have their opinions and views heard. This level of public access is somewhat not afforded to the community in other spheres of government as local government is often referred to the 'closest to the community'.

Notwithstanding any additional activities that assist with elected members engaging with the community, should be supported and in terms of an Elected Member performing their legislative role – that is representing the interests of electors, ratepayers and residents for the City's district.

**VOTING REQUIREMENTS**

Simple Majority.

*Cr Thompson left the electronic meeting at 6.50pm and returned at 6.51pm.*

*Cr Poliwka left the electronic meeting at 6.55pm.*

**MOVED Mayor Jacob, SECONDED Cr May that Council ADOPTS the revised *Elected Members Communications Policy* as detailed in Attachment 1 to this Report.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Cr Hamilton-Prime, Mayor Jacob, Crs Chester, Fishwick, Hollywood, Jones and May.

*Appendix 3 refers*

*To access this attachment on electronic document, click here: [Attach3agnPOLICY200504.pdf](#)*

## **ITEM 4                    DRAFT REVISED ALFRESCO ACTIVITIES LOCAL PLANNING POLICY**

<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Ms Dale Page Planning and Community Development
<b>FILE NUMBER</b>	03360, 101515
<b>ATTACHMENTS</b>	Attachment 1    Current <i>Alfresco Activities</i> Policy Attachment 2    Revised <i>Alfresco Activities Local Planning Policy</i> Attachment 3    Draft <i>Alfresco Activities Self-Assessment Checklist</i>
<b>AUTHORITY / DISCRETION</b>	Legislative - includes the adoption of local laws, planning schemes and policies.

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### **PURPOSE**

For Council to consider a draft revised *Alfresco Activities Local Planning Policy* for the purposes of public advertising.

### **EXECUTIVE SUMMARY**

At its meeting held on 12 December 2017 (CJ96-12/17 refers), Council requested that the City investigates opportunities to stimulate and encourage employment in the hospitality and tourism sectors within the City of Joondalup. Subsequently, a report was presented to Council on 16 October 2018 (CJ170-10/18 refers), which proposed certain measures to expand on the initiatives the City is currently undertaking to stimulate tourism ventures. One of these measures included the possibility of changing the regulations and licensing arrangements applicable to alfresco activities to encourage this form of development.

Currently, development (planning) approval is required for all alfresco activities and this approval must be renewed every three years. In accordance with Council's resolution, the City's current *Alfresco Activities Policy* (Attachment 1 refers) has been reviewed to:

- simplify and streamline the approval process for businesses seeking to operate alfresco activities within the City of Joondalup
- provide greater flexibility in the way alfresco activity can be conducted
- exempt alfresco activities that comply with specific policy provisions, from the need to obtain planning approval.

In addition to a planning approval, alfresco operators also need to obtain an outdoor eating permit, which is governed by the *Local Government and Public Property Local Law 2014*. Currently, both the planning approval and outdoor eating permit need to be approved by the City (and conditions of approval met) prior to commencing the alfresco activities.

Under the proposed changes there may be instances where only an outdoor eating permit is needed prior to commencing.

It is recommended that Council supports the draft revised *Alfresco Activities Local Planning Policy* (Attachment 2 refers) for the purposes of consultation for a period of 21 days.

## BACKGROUND

Alfresco activities include the consumption of food and/or beverages by the public, generally within the verge area next to an existing food business. Alfresco activities can add vibrancy and contribute to creating a greater sense of place.

Currently, planning approval is required for all alfresco activities in the City of Joondalup, and that approval is required to be renewed every three years. The assessment of planning applications for alfresco activities is undertaken against the City's current *Alfresco Activities Policy*. The policy contains provisions that aim to maintain pedestrian and vehicle safety, whilst allowing businesses to utilise public areas to increase vibrancy and choice for residents and visitors.

The current *Alfresco Activities Policy* includes provisions related to the following:

- Where alfresco areas can be located in the street verge.
- Managing the potential impact on amenity of the streetscape.
- The type of tables and chairs permitted in the alfresco area.
- The location, materials, height and size of shelters and shade structures.
- Hazard management and liability implications.
- Operational implications should access to the land be required by a public authority (such as Water Corporation, Western Power, the City, telecommunication providers).

In addition to the requirement for planning approval, operators also need to obtain an outdoor eating permit under the *Local Government and Public Property Local Law 2014*. Both the planning application and outdoor eating permit need to be approved by the City prior to commencing the alfresco activities.

At its meeting held on 12 December 2017 (CJ96-12/17 refers), Council resolved in part:

*“That Council REQUESTS the Chief Executive Officer to prepare a report that examines initiatives which can stimulate opportunities and employment in hospitality and tourism ventures within the City of Joondalup, with the examination of measures including, but not limited to:*

- 1 *possible changes to alfresco regulation and licensing including allowances for signage and verge / sidewalk alfresco structures to encourage greater alfresco hospitality provision within the City of Joondalup...”*

In response to Council's December 2017 resolution, at its meeting held on 16 October 2018 (CJ170-10/18 refers), Council was presented with a further report, which outlined the tourism and hospitality related initiatives currently being undertaken by the City and a number of additional potential actions and initiatives to encourage economic development and tourism development in the City of Joondalup. One of these options included the review of the *Alfresco Activities Policy* to investigate exempting alfresco operators from the need for planning approval in certain circumstances.

## DETAILS

The revisions to the *Alfresco Activities Policy* seek to:

- provide a more streamlined and efficient process for businesses to set up alfresco activities through creating a pathway where planning approval may not be required
- provide more flexibility for businesses setting up alfresco activities to create fit-for-purpose spaces that suit the needs of the operator/business and contribute to the character and vibrancy of an area.

### Exemption from planning approval

In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations), planning approval is not required for works and uses which are specified as being exempt under a local planning policy.

It is recommended that should a proposed alfresco activity comply with the provisions of the revised *Alfresco Activities Local Planning Policy*, the proposal should be exempt from the need for planning approval. This will assist in reducing delays in commencing alfresco activities on site and reduce costs for the applicant/business by not requiring fees for a planning application.

To determine whether planning approval is required, the applicant will be required to complete a simple Alfresco Activities Self-Assessment Checklist (Attachment 3 refers) to assess compliance with the *Alfresco Activities Local Planning Policy*. This checklist would need to be submitted with the outdoor eating permit application.

If any non-compliance with the *Alfresco Activities Local Planning Policy* or inaccuracies in the applicant's self-assessment are identified when the outdoor eating permit application is assessed by the City, the City would advise that applicant that planning approval would be required prior to commencing operations. Once in operation, should any breach or non-compliance with the *Alfresco Activities Local Planning Policy* be identified by the City, action would be undertaken to ensure compliance with the policy or require the lodgement of a planning application.

Issues associated with safety and public liability will still be addressed through the outdoor eating permit process to ensure these issues are managed appropriately as outlined in further detail below.

### Proposed amendments to the *Alfresco Activities Policy*

The *Alfresco Activities Policy* has been reviewed and a number of amendments are recommended as outlined below.

#### *Duplications and invalid planning considerations*

There are a number of requirements under the current *Alfresco Activities Policy* that are either duplications of environmental health requirements and/or are not valid considerations under the planning framework. These include provisions relating to legal liability of operators, the cleanliness/condition of tables and chairs, as well as safety concerns and hazard management issues. The majority, if not all, of these requirements are covered under, and more appropriately controlled by separate legislation, mainly the City's *Local Government and Public Property Local Law 2014* and dealt with through the outdoor eating permit process. It is therefore recommended that these provisions be removed from the revised *Alfresco Activities Policy*.

### *Planter boxes*

Under the current *Alfresco Activities Policy*, planter boxes are required to be supplied and installed by the City in the approved alfresco areas. This was considered appropriate as part of the *Alfresco Activities Policy* review in October 2009 as a means to provide a level of cohesion and consistency in the appearance of alfresco dining areas. It was intended that the planter boxes would be provided by the City and maintained by the operator; however, due to cost, management and administrative issues, this initiative has never been fully implemented.

It is recommended that the provisions regarding planter boxes are removed to allow operators greater flexibility to determine their own needs in respect to temporary barriers and furniture, consistent with the requirements of the revised *Alfresco Activities Local Planning Policy*. It should be noted that the revised policy still allows for businesses to include planter boxes in the alfresco area, however these would need to be provided and maintained by the operator.

### *Furniture and structures*

Under the current policy, permanent structures can be considered within the verge subject to a set of specific criteria. Permanent structures can have implications from a maintenance and accessibility perspective for utility/service providers where underground infrastructure is located within the verge. There are also potential implications should any upgrades or maintenance works be required within the verge or the road carriageway.

It is therefore recommended that the revised policy not permit permanent structures 'as-of-right', to avoid any implications associated with these structures. It is important to note, however, that this would not preclude an operator submitting an application for planning approval for the City to consider any permanent works within the verge on a case-by-case basis.

Instead, the revised policy proposes greater flexibility to allow the use of moveable barriers and umbrellas, together with limited signage on those objects (for example, signs advertising the business or goods and services provided by the business), portable tables and chairs and other seating/dining furniture.

### *Alfresco zones*

The current policy includes maximum alfresco zone widths under clause 5.1. For general alfresco locations (Figure 1) the maximum width of any alfresco zone is 2.5 metres. Alfresco activities along Lakeside Drive (Figure 2) are restricted to a maximum width of 4 metres.

It is recommended that these maximum alfresco zone widths are removed, as the size is generally restricted by the width of the verge and the applicable minimum pedestrian and kerbside zones required under the policy. This will provide greater flexibility and ability to provide larger alfresco areas, provided they do not impact on pedestrian and vehicle movement.

### *Minor modifications*

It is recommended that the title of the policy be modified from a 'Council Policy' to a 'Local Planning Policy' consistent with the terminology used under the Regulations. In addition, the Central Walk pedestrian and alfresco zones have been corrected as the minimum width requirements are incorrect under the current policy.

**Issues and options considered**

Council has the option to either:

- advertise the draft revised *Alfresco Activities Local Planning Policy*, without modifications
- advertise the revised *Alfresco Activities Local Planning Policy*, with modifications or
- not support the advertising of the revised *Alfresco Activities Local Planning Policy*.

**Legislation / Strategic Community Plan / Policy implications**

**Legislation**                      *Metropolitan Region Scheme.  
Local Planning Scheme No. 3.  
Planning and Development (Local Planning Schemes) Regulations  
2015.*

**Strategic Community Plan**

**Key theme**                      Quality Urban Environment.

**Objective**                      Quality built outcomes.

**Strategic initiative**        Building and landscape is suitable for the immediate environment and reflect community values.

**Policy**                              *Alfresco Activities Policy.*

**Risk management considerations**

Risks associated with exempting development approval for alfresco activities can be reduced by requiring applicants to complete the Alfresco Activities Self-Assessment Checklist, which will be reviewed by the City as part of the outdoor eating permit application process.

Any alleged non-compliance can be investigated and acted upon by the City should a complaint be received for any alfresco activity which does not comply with the relevant provisions of the revised policy.

**Financial / budget implications**

There will be a minor loss of revenue, should proposed alfresco activities meet the provisions of the revised policy and not require planning approval.

In the 2018-19 financial year, the City received and approved six planning applications for alfresco activities (including both new and renewal applications). The total fees received for these applications was \$882.00 (\$147.00 per application) and represents 0.1% of the revenue the City received that year from planning applications.

In addition to the planning application fee, an annual outdoor eating permit fee of \$338.00 plus \$34 per square metre applies to all alfresco areas. This outdoor eating permit process and associated fee is not proposed to be changed as part of this policy view. This is a standard fee applicable to all alfresco dining operations under the City's *Schedule of Fees and Charges*.

In terms of costs associated with public advertising and notice of any final adoption of the revised policy, the approximate cost of this process will be \$1,000.

### **Regional significance**

Not applicable.

### **Sustainability implications**

The revised policy will allow hospitality businesses to adapt and expand, whilst activating the public realm and providing varied dining experiences for visitors and residents. The additional seating and dining areas within these alfresco areas may also assist in the growth of businesses and subsequent employment opportunities.

### **Consultation**

The deemed provisions as set out in the *Planning and Development (Local Planning Scheme) Regulations 2015* require a new policy or major amendment to a policy to be advertised for public comment for a period of not less than 21 days. The revised policy is proposed to be advertised for 21 days as follows:

- a notice published in the local newspaper
- a letter sent to the Joondalup Business Association
- a notice and documents placed on the City's website
- a notice on the City's social media platforms.

If, in the opinion of the City, a local planning policy is inconsistent with any State planning policy, then notice of the proposed policy is to be given to the Western Australian Planning Commission. The revised policy is not considered to be inconsistent with any State planning policy.

### **COMMENT**

The revised *Alfresco Activities Local Planning Policy* aims to provide clarity as to the City's expectations in respect to alfresco activities from a planning perspective, whilst providing greater flexibility for businesses. It is recommended that Council advertise the revised *Alfresco Activities Local Planning Policy* for public comment for a period of 21 days.

### **VOTING REQUIREMENTS**

Simple Majority.

*Cr Poliwka entered the meeting at 6.58pm.*

### **OFFICER'S RECOMMENDATION**

That Council, in accordance with clauses 3 and 4 of schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, PREPARES and ADVERTISES the revised Alfresco Activities Local Planning Policy, as shown in Attachment 2 to this Report, for a period of 21 days.

**MOVED Cr Hollywood, SECONDED Cr May that Council:**

- 1** in accordance with clauses 3 and 4 of schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, PREPARES and ADVERTISES the revised Alfresco Activities Local Planning Policy, as shown in Attachment 2 to this Report, for a period of 21 days;
- 2** AGREES business operators needing to commence or expand alfresco activity in response to the State Government's restriction on maximum patron numbers (20) and social distancing requirements for patrons, will be able to conduct such activities on the basis they are considered a temporary use as per clause 61(1)(f) of schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* until the State Government's restrictions are lifted and the alfresco activity is no longer required, or until the revised *Alfresco Activities Local Planning Policy* is finalised;
- 3** AGREES the temporary alfresco activity detailed in part 2 above, will need to adhere to the draft Alfresco Activities checklist at Attachment 3 to this Report.

The Motion was Put and

**CARRIED (7/0)**

In favour of the Motion: Cr Hamilton-Prime, Mayor Jacob, Crs Chester, Fishwick, Hollywood, Jones and May.

*Appendix 4 refers*

To access this attachment on electronic document, click here: [Attach4agnPOLICY200504.pdf](#)

**ITEM 5                    AMENDMENT TO PURCHASING POLICY**

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<b>WARD</b>	All
<b>RESPONSIBLE DIRECTOR</b>	Mr Mat Humfrey Corporate Services
<b>FILE NUMBER</b>	09763, 101515
<b>ATTACHMENT</b>	Attachment 1 <i>Purchasing Policy - Amended</i>
<b>AUTHORITY / DISCRETION</b>	Legislative - includes the adoption of local laws, planning schemes and policies.

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**PURPOSE**

For Council to consider and adopt the proposed amendments to the City's *Purchasing Policy*.

**EXECUTIVE SUMMARY**

The City's *Purchasing Policy* has been reviewed in light of legislative changes to the *Local Government (Functions and General) Regulations 1996* that took effect from 9 April 2020. These changes formed part of a larger suite of legislative amendments promulgated by the State Government in response to the challenge of the COVID-19 pandemic.

The primary legislative change affecting the *Purchasing Policy* is the raising of the tender threshold to \$250,000.

*It is recommended that Council ADOPTS the revised Purchasing Policy forming Attachment 1 to this Report.*

**BACKGROUND**

On 9 April 2020, the State Government gazetted a number of legislative amendments that impacted on local governments. Among a number of changes made to the *Local Government Act 1995* and attendant regulations, a change was effected to the *Local Government (Functions and General) Regulations 1996* that raised the threshold for public tenders to be invited.

The amendments to the *Purchasing Policy* give effect to this change and also a minor correction to an existing protocol title referenced in the policy.

**DETAILS**

The *Local Government (Functions and General) Regulations 1996* (the Regulations) were amended on 9 April 2020 as part of wider legislative changes effected by the State Government in response to the crises arising from the COVID-19 pandemic.

Regulation 11(1) of the Regulations has been amended by raising the threshold at which a local government is required to invite public tenders before entering into goods or services contracts to \$250,000 (previously \$150,000).

Regulation 11(1) now states:

*“Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250,000 unless subregulation (2) states otherwise.”*

This brings the tender threshold for WA local governments into line with State Government departments and agencies and better facilitates local government ability to undertake procurement in response to the challenges expected to be produced by the COVID-19 pandemic.

It is therefore proposed to amend the City’s *Purchasing Policy* to stipulate the threshold at which the City is required to invite public tenders as \$250,000, in line with the recent change to legislation.

It is also proposed to amend the quotation requirements in the policy for procurement values less than \$250,000 by requiring a minimum of three written quotations with full specifications using quotation documents in accordance with purchasing protocols for expected consideration from \$50,000 to \$250,000 (currently \$50,000 to \$150,000), in line with the proposed increase in the tender threshold within the policy.

It is noted that regulation 11A(1) of the Regulations currently prescribes that a local government is required to adopt a purchasing policy for procurement of goods or services where consideration under a contract is expected to be \$150,000 or less.

This regulation has not been amended to reflect the change regulation 11A(1). It is expected that this may have occurred by the time this report is tabled before the Policy Committee.

The City has received advice from the Department of Local Government, Sport and Cultural Industries that the proposed amendment to the quotation thresholds in the policy can proceed in the meantime.

In addition to the changes arising from the amendment to the Regulations, the City also identified a minor correction to a Purchasing Protocol referred to in the policy, namely the *Purchasing Goods and Services under Panel Contracts*. This should read the *Purchasing Goods and Services under Panels of Pre-Qualified Suppliers*. This title better aligns with references to “panels of pre-qualified suppliers” elsewhere in the policy document.

### **Legislation / Strategic Community Plan / Policy implications**

**Legislation**                      *Local Government (Functions and General) Regulations 1996.*

#### **Strategic Community Plan**

**Key theme**                        Governance and Leadership.

**Objective**                        Corporate capacity.

**Strategic initiative**            Continuously strive to improve performance and service delivery across all corporate functions.

**Risk management considerations**

The amendments are necessary to bring the City's *Purchasing Policy* in line with the revised legislation. While the policy can be retained in its current form without giving effect to the legislative updates, the City will be unable to make use of the increased tender threshold. This may result in reduced operational efficiencies and unnecessary use of resources, particularly in the current environment.

**Financial / budget implications**

Not applicable.

**Regional significance**

Not applicable.

**Sustainability implications**

Not applicable.

**Consultation**

The Department of Local Government, Sport and Cultural Industries was approached for advice regarding amendments to quotation thresholds in the policy ahead of changes to regulation 11A(1) of the *Local Government (Functions and General) Regulations 1996*. The City has been advised that there is no prohibition against the City amending quotation thresholds to accommodate higher tender threshold ahead of any amendments to this Regulation.

**COMMENT**

The proposed updates to the *Purchasing Policy* are driven primarily by the changes to the *Local Government (Functions and General) Regulations 1996*. The City cannot give effect to these changes without amending the policy accordingly.

**VOTING REQUIREMENTS**

Simple Majority.

*Cr Jones left the electronic meeting at 7.10pm and returned at 7.13pm.*

*The Director Planning and Community Development left the electronic meeting at 7.12pm and returned at 7.14pm.*

**MOVED Cr Fishwick, SECONDED Cr May that Council ADOPTS the amended *Purchasing Policy* forming Attachment 1 to this Report.**

**The Motion was Put and**

**CARRIED (7/0)**

**In favour of the Motion:** Cr Hamilton-Prime, Mayor Jacob, Crs Chester, Fishwick, Hollywood, Jones and May.

*Appendix 5 refers*

*To access this attachment on electronic document, click here: [Attach5agnPOLICY200504.pdf](#)*

**URGENT BUSINESS**

Nil.

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

Nil.

**REQUESTS FOR REPORTS FOR FUTURE CONSIDERATION**

Nil.

**CLOSURE**

There being no further business, the Presiding Member declared the meeting closed at 7.18pm; the following Committee Members being present at the electronic meeting that time:

Cr Christine Hamilton-Prime  
Mayor Hon. Albert Jacob, JP  
Cr Kerry Hollywood  
Cr Christopher May  
Cr Nige Jones  
Cr Russ Fishwick, JP  
Cr John Chester