

NOTICE OF MEETING

COMMITTEE OF COUNCIL

Members of the Committee of Council are advised that a meeting of the Committee will be held in the Council Chambers 83 Mandurah Terrace, Mandurah on:

**Tuesday 10 Aug 2021
at 5.30pm**

MARK R NEWMAN

Chief Executive Officer
5 August 2021

Committee Members

Councillor P Jackson [Chairperson]
Councillor M Darcy
Councillor C Knight
Councillor L Rodgers
Councillor A Zilani

Councillor J Green
Councillor Di Prinzio
Councillor D Pember
Councillor P Rogers
Mayor R Williams

AGENDA

1 OPENING OF MEETING AND ANNOUNCEMENT OF VISITORS

2 APOLOGIES

Councillor L Rodgers – leave of Absence

3 IMPORTANT NOTE:

Members of the public are advised that the decisions of this Committee are referred to Council Meetings for consideration and cannot be implemented until approval by Council. Therefore, members of the public should not rely on any decisions of this Committee until Council has formally considered the resolutions agreed at this meeting.

4 RESPONSES TO QUESTIONS TAKEN ON NOTICE

5 PUBLIC QUESTION TIME

Public Question Time provides an opportunity for members of the public to ask a question of Council. For more information regarding Public Question Time please visit the City's website mandurah.wa.gov.au or telephone 9550 3787.

6 AMENDMENT TO STANDING ORDERS

Modification to *Standing Orders Local Law 2016* - electronic attendance at meeting.

7 PRESENTATIONS

8 DEPUTATIONS

Any person or group wishing to make a Deputation to the Committee meeting regarding a matter listed on this agenda for consideration must complete an application form. For more information regarding making a deputation please visit the City's website mandurah.wa.gov.au or telephone 9550 3787.

NB: Persons making a deputation to this Committee meeting will not be permitted to make a further deputation on the same matter at the successive Council meeting, unless it is demonstrated there is new, relevant material which may impact upon the Council's understanding of the facts of the matter.

9 CONFIRMATION OF MINUTES: 13 JULY 2021

Minutes available on the City's website via mandurah.wa.gov.au/council/council-meetings/agendas-and-minutes

10 DECLARATIONS OF FINANCIAL, PROXIMITY AND IMPARTIALITY INTERESTS**11 QUESTIONS FROM COMMITTEE MEMBERS WITHOUT DISCUSSION**

11.1 Questions of which due notice has been given

11.2 Questions of which notice has not been given

12 BUSINESS LEFT OVER FROM PREVIOUS MEETING**13 REPORTS:**

No.	Item	Page No	Note
1	CSRFF 2021/22 Small Grants Winter Round	3 – 9	Absolute Majority Required
2	Vesting of Peel Parade Right of Ways	10 – 16	
3	Code of Conduct Complaints Management Policy	17 - 35	Absolute Majority Required
4	Review of Trading Permit Guidelines	36 – 57	
5	Beach Patrol Service: Overview Season Two 2021	58 - 68	

14 LATE AND URGENT BUSINESS ITEMS**15 CONFIDENTIAL ITEMS****16 CLOSE OF MEETING**

1	SUBJECT:	CSRFF 2021/22 Small Grants Winter Round
	DIRECTOR:	Place and Community
	MEETING:	Committee of Council Meeting
	MEETING DATE:	10 August 2021

Summary

The Community Sport and Recreation Facilities Fund (CSRFF) is administered by the Department of Local Government, Sport and Cultural Industries (DLGSC). It provides financial assistance to community groups and local government authorities to develop infrastructure for sport and recreation.

The CSRFF small grants round aims to increase participation in sport and recreation, with an emphasis on physical activity, through the development of sustainable, quality, well designed and well utilised facilities where the total cost of the project does not exceed \$300,000. The application process for submissions requires local government authorities to undertake an initial assessment to ensure that the proposed projects are well planned, prioritised and of positive benefit to the community.

No applications have been received from local sport and recreation clubs within this CSRFF Small Grants round. The City intends to submit two applications for funding as part of the CSRFF Round for the upgrade of the Peelwood Reserve Changerooms and for a Needs Assessment and Feasibility Study – “Future Options for Netball in Mandurah” to investigate the need and viability of a new facility to support Netball in Mandurah into the future.

Council is requested to support the rating and priority of the two projects being submitted for the 2021/22 CSRFF Small Grants round. Sufficient funds are available for the purpose in the 2021/22 budget to cover the City’s financial contribution towards these projects.

Disclosure of Interest

Nil

Location

Project 1 – Peelwood Reserve Changerooms



65 Mahogany Drive, Halls Head

Previous Relevant Documentation

Nil

Background

The DLGSC - Sport and Recreation offer four grant categories within the CSRFF program:

- (a) Forward Planning Grants: \$166,667 up to \$4,000,000 can be allocated to large scale projects where the total project cost exceeds \$500,000 and may require an implementation period of between one and two years. Grants given in this category may be allocated in one or a combination of the years in the triennium.
- (b) Annual Grants: \$50,000 to \$166,666 can be allocated to projects with a planning and construction process that will be complete within 12 months. The total project cost for Annual Grants is between \$150,000 and \$500,000. Grants awarded in this category must be claimed in the financial year following the date of approval.
- (c) Small Grants: \$7,500 to \$100,000 can be allocated to projects involving a basic level of planning. The total project cost for Small Grants must not exceed \$300,000. Grants awarded in this category must be claimed in the financial year following the date of approval. There are two rounds per year and coincide with the summer and winter sporting seasons.
- (d) In July 2021, DLGSCI introduced the Club Night Lights Program which can be allocated to projects to develop sports floodlighting. The maximum grant provided is \$1 million dollars, grants awarded in this category must be claimed in the financial year following the date of approval. There is one round per year.

The maximum CSRFF grant approved can be no greater than one third of the total estimated project cost. The DLGSC - Sport and Recreation contribution must be at least matched by the applicant's contribution. The remaining third can be secured by the applicant or other partner(s).

Council is required by the DLGSC to rank each project according to its priorities for the development or upgrade of facilities, ensuring consistency with relevant strategic documents, and then rate each project according to individual merit.

The project ratings are identified as follows:

Well planned and needed by the municipality	High
Well planned and needed by applicant	Medium/High
Needed by municipality, more planning required	Medium
Needed by applicant, more planning required	Medium/Low
Idea has merit, more preliminary work needed	Low
Not recommended	Not recommended

Comment

Council is requested to consider two applications as part of the CSRFF Small Grants - Summer Round.

Project 1 – City of Mandurah

Project	Upgrade of the Peelwood Reserve Changerooms
Location	Peelwood Reserve
Years Applied for	2021/22

Total Project Cost	\$221,870
Eligible Grant Criterial Total	\$73,956.66
CSRFF Grant Request	\$73,956.66
CoM ContributionI (CSRFF)	\$47,913.34
CoM Contribution (21/22) Capital	\$100,000
Other Potential Funding	-
Clubs' Contribution (cash)	\$0
Clubs' Contribution (in kind)	\$0
Recommended Ranking	It is recommended that this project be given a ranking of "1" and a rating of "high"

Project Description

The City of Mandurah plays a pivotal role in ensuring that community spaces are designed to facilitate equitable access and are conducive to inclusive community participation. Peelwood Reserve changerooms are over 30 years old and do not reflect current usage levels or have capacity to accommodate future growth in participation. Upgrades are required to create appropriate facilities that include gender neutral spaces suitable for players, umpires and officials.

The City has identified an opportunity to increase community participation through the upgrade of the Peelwood Reserve changeroom amenities. The upgrade would provide standard features for unisex change facilities that cater for the needs of both males and females and include:

- Privacy screens at the entry to change rooms;
- Individual toilet cubicles; and
- Individual lockable shower cubicles with change seats inside each cubicle.

Peelwood Reserve is located in Halls Head and has three full size ovals which are an invaluable asset for the delivery of community sport. With Halls Head Cricket Club and Mandurah City Football Club based at Peelwood Reserve, there is extensive usage of the oval and its facilities, each day of the week and all year round. The changeroom facilities are available for all hirers of the reserve.

Halls Head Cricket Club and Mandurah City Football Club offer junior and senior programs, activities and competitions. They both have female teams in various age groups and as well as experiencing steady growth, both clubs have strategies in place to grow female participation within the near future.

Football West and the West Australian Cricket Association (WACA) have Infrastructure Strategies that provide direction for the future planning, provision and development of the sports at community level. Both strategies identify a focus on female sport and developing spaces that are welcoming, accessible and inclusive.

A key objective of the DLGSC - Sport and Recreation is to increase community participation in sport. The upgrade of Peelwood Changerooms will deliver this objective through facility improvements that cater for both male and female participants.

The basic provision of unisex change rooms is considered an integral component in increasing the growth of female participation in sports.

Officers have recommended that this project is ranked one and rated "high" as it is well planned and aligns with the needs of the clubs, the local community and state government objectives. In making this assessment, officers noted that the City has budgeted \$100,000 through the 2021/22 capital budget towards this project as a carry forward from the previous financial year and can meet the remaining budget through the City's CSRFF contribution.

Consultation

Consultation for the proposed facility upgrades has been undertaken as follows:

Consultation has occurred with the DLGSC – Sport and Recreation, Football West, WACA and within the City of Mandurah – project supported.

<u>Project 2 – City of Mandurah</u>	
Project	Needs Assessment and Feasibility Study – Future Options for Netball in Mandurah
Location	Various
Years Applied for	2021/22
Total Project Cost	\$45,000
Eligible Grant Criterial Total	\$15,000.00
CSRFF Grant Request	\$15,000.00
Requested from Council	\$25,000.00
Other Potential Funding	\$5,000.00 (Netball WA)
Clubs' Contribution (cash)	\$0
Clubs' Contribution (in kind)	\$0
Recommended Ranking	It is recommended that this project be given a ranking of “2” and a rating of “high”

Project Description

The City of Mandurah plays a critical role in providing quality community facilities for local sport and recreation clubs. Netball is the highest female participation sport within the City. In Mandurah, the Mandurah Netball Association (MNA), the Peel Football and Netball League (PFNL) and Mandurah Aquatic and Recreation Centre (MARC) provide a range of participation opportunities for netballers aged from age six to open divisions. These organisations provide programs from social to competitive netball including opportunities to play in WA's premier netball competition, the WA Netball League.

The Thomson Street Netball facilities, located within the Rushton Park Sporting complex is the home for the MNA. The Association runs their operations from ten plexipave courts and a community clubhouse and have been delivering netball programs to the Mandurah community for over 30 years. The PFNL play their home games at MARC. Both South Mandurah, Halls Head and Mandurah Mustangs play within this league. South Mandurah and Halls Head field teams in all four divisions (League, Reserves, Open and 20 Under) and Mandurah Mustangs field teams in three of the four divisions.

Although netball participation is strong within Mandurah, MNA over many years has reported that they have been unable to grow membership and participation numbers due to a lack of sufficient courts to cater for increasing demand. At the current home of MNA there is no opportunity for additional courts to be built at the site and therefore due to increasing demand and opportunities within netball there is a need to investigate future options for netball provision and suitable facilities within Mandurah.

This proposed project will enable the City to engage a consultant to look at the future needs of netball in the City of Mandurah and to undertake a feasibility study, both of which will provide information that will assist in the decision-making process to ascertain the recommended future direction and possible site selection for a new home for netball, if this is deemed necessary.

The analysis will take a broad focus on finding a solution to address the expressed need by MNA for increased netball court provision. The investigation will explore a range of ways to address this need, from different management models including different days of operation, times and service delivery, through to construction of new courts. It will provide comprehensive information to identify and analyse whether a

new facility is required within the City or whether the projected growth and need can be satisfied in some other way.

If it is determined that construction of a new facility is required, the needs assessment will offer direction with regard to the most appropriate scope, scale, facility components and any timing implications for a proposed facility. The Needs Assessment is the first vital step in the facility planning process. The study will then examine the viability of a new facility so that any decision can be informed by objective analysis. The study may examine some of the following, but is not limited to:

- Management options
- Facility components
- Location options
- Basic concept plans
- Social, economic and environmental sustainability
- Cost

Therefore, the project will look at the need for a new facility and what the scope, requirements and costs of such a facility may be now and into the future to meet the needs of local netball. The project will examine and provide potential location sites and highlight any implications these options may have. It will also provide some options in terms of the approach to the project in regards to timing and staging alternatives. It will also provide basic concept designs on each of the potential sites for consideration.

The DLGSC - Sport and Recreation has a focus on increasing participation. The project will provide the City with vital information to determine a position on the need for a new purpose-built netball facility, allowing for future projected growth. In addition, it will provide the basis for a solid business case, if required, to seek State Government and other funding partners support via investment in this infrastructure project.

Officers have recommended that this project is ranked two and rated “high”, as it will provide a range of information that will assist the City to make an informed decision on possible future options for netball in Mandurah to enable local participation and growth. Officers have been in discussions with Netball WA and they have confirmed their maximum funding support of \$5,000 through their Community Facilities Fund. It is anticipated the remaining budget be met through the City’s CSRFF contribution.

Consultation

Communication about the proposed Needs Assessment and Feasibility Study – “Future Options for Mandurah Netball” has occurred with the following:

- Mr David Templeman, MLA
- Minister Tony Buti, Minister for Finance; Lands; Sport and Recreation;
- Department of Local Government, Sport and Cultural Industries: Peel Office - Troy Jones
- Netball WA: Liz Booth - General Manager - Community Netball, David Lindsay - Netball Operations Manager and Jo Smith - Stakeholder Engagement Manager.
- Mandurah Netball Association
- City of Mandurah Representatives

Statutory Environment

N/A

Policy Implications

Policy CNP-07 Community & Recreation Facilities

This policy guides the City in the design, development and management of City owned community and recreational facilities. The policy applies to both existing and future facilities.

Policy CNP-05 Recreation Facility Development

Council may contribute a portion of funding towards the development of sport and recreation facilities in accordance with its Sport and Recreation Facility Development Procedures. The remaining funding must be provided by the applicant club or association or through a combination of club contributions and other funding sources such as grants, sponsorship, voluntary labour, donations etc.

Financial Implications

The project recommended for support is:

Project	Lodged by	Council Contribution Requested
Upgrade of the Peelwood Reserve Changerooms	City of Mandurah	\$47,913.34
Needs Assessment and Feasibility Study – Future Options for Mandurah Netball.	City of Mandurah	\$25,000
Total		\$72,913.34

Results of the grant applications will be announced in November 2021 with the projects to be delivered in the 2021/22 financial year. If the projects are successful with the grant submission, the combined funding contribution from Council would total \$72,913. Currently, the City has the following funds remaining in the 2021/22 budget;

- \$118,353 CSRFF Projects – Various
- \$100,000 – Peelwood Changeroom Project (Capital Budget 2021/22)

The City currently has no funds listed in the Long Term Financial Plan for the construction of new netball facilities. The City has not identified suitable local government land within the City of Mandurah for new netball courts.

Risk Analysis

To ensure the provision of quality community infrastructure that is delivered in a safe and timely manner with little or no disruption to the community, a City Project Officer will be assigned to the project.

Strategic Implications

The following strategies from the City of Mandurah Strategic Community Plan 2020 – 2040 are relevant to this report:

Social:

- Facilitate opportunities that promote community led initiatives and build local capacity and capability.
- Provide a range of social, recreational and cultural experiences for our residents and visitors to enjoy and take pride in.

Health:

- Provide and facilitate quality infrastructure that is accessible and conducive to a healthy, active community.

Organisational Excellence:

- Ensure the City has the capacity and capability to deliver quality services and facilities through accountable and transparent business practices, governance, risk and financial management.

Conclusion

The application received through the 2021/22 CSRFF Small Grants Round has been well prepared by the City and is consistent with Council's Community and Recreation Facilities Policy.

It is considered suitable that the City is the applicant for the Peelwood Reserve changerooms because the upgrade improves the provision for all in the multi-use facility.

It's considered suitable that the City is the applicant for the netball study to ensure a neutral, equitable, solutions-focussed analysis that is innovative in exploring options to meet the needs of netball.

A requirement of the CSRFF funding program is that if the City funds are being contributed then there is a pre-commitment of funding for the year in which the grant is approved. The City contributions reflected in this report in the table below:

Grant Type	Rank	Project	Rating	Lodged by	CSRFF Funding Requested	Existing Council Contribution	City of Mandurah Contribution Requested
Small	1	Upgrade of the Peelwood Reserve Changerooms	High	COM	\$73,956.66	\$100,000	\$47,913.34
Small	2	Feasibility Study	High	COM	\$15,000	\$0	\$25,000

RECOMMENDATION

That the Committee of Council recommend that Council supports the rankings and ratings for the Community Sport and Recreation Facility Fund Small Grant application:

- 1 **City of Mandurah**
 Project: Upgrade of the Peelwood Reserve Changerooms
 Ranking: 1
 Rating: High
 Requested Council Contribution: \$47,913.34

2. **City of Mandurah**
 Project: Needs Assessment and Feasibility Study: Future Options for Mandurah Netball
 Ranking: 2
 Rating: High
 Requested Council Contribution: \$25,000

***ABSOLUTE MAJORITY REQUIRED**

2	SUBJECT:	Vesting of Peel Parade ROWs - Provision of Groundwater at Coodanup Foreshore
	DIRECTOR:	Business Services
	MEETING:	Committee of Council Meeting
	MEETING DATE:	10 August 2021

Summary

As part of the Coodanup foreshore redevelopment, a viable and fit for purpose water source is critical to enable commencement of works and the ongoing management of the foreshore. An original determination identified that water was available to be drawn from the foreshore itself, however, the Department of Water and Environmental Regulation (DWER) have advised that any abstraction of water is required to be a minimum 200 metres away from the wetland zone.

There are limited alternative locations to source the water from, although preliminary investigations have identified a convenient cost-effective option which is the installation of water infrastructure underground through two abutting right of ways (ROWs) between Duncan Road and Peel Parade, which are located directly across from the foreshore.

The water infrastructure will consist of a shallow production bore being drilled and equipped, including a water mainline being installed through the ROWs. The groundwater supply will be pumped through the installed mainline to provide irrigation and greenspace for the Coodanup Foreshore upgrade.

However, as the ROWs are still held in private ownership by a descendant of the original subdivider of the area, the City must firstly arrange for the land to be transferred under its management in order to utilise it; and officers have undertaken the required actions in accordance with *Section 52 of the Land Administration Act 1997*, including a comprehensive consultation process, to facilitate this.

As the land is currently, and will continue to be, utilised as a public access way, a purpose of 'Pedestrian Accessway' is proposed to be applied to the management order.

Council is, therefore, requested to endorse a submission to the Minister for Lands for the transfer of the right of ways, being Lot 66 on Plan 6616 and Lot 266 on Plan 6698, to the Crown for subsequent vesting to the City, for the purpose of Pedestrian Accessway.

Disclosure of Interest

Nil

Location



Previous Relevant Documentation

- G.10/12/20 15 December 2020 Council endorsed the draft Coodanup Foreshore Landscape Masterplan.

Background

The subject right of ways, Lot 66 on Plan 6616 and Lot 266 on Plan 6698, are remnant parcels from the original subdivision circa 1970s, they are still held in private ownership by a descendant of the original subdivider. They have been utilised since inception as unmanaged access ways for the public through to the foreshore and as such, no local government rates have been raised or charged to the property during this time.

As part of the Coodanup Foreshore redevelopment, a viable and fit for purpose water source is critical, officers have identified that the ROWs are required for the installation of underground water infrastructure to support the foreshore upgrades, however the land will need to be transferred to the Crown for vesting to the City under a management order before this can occur. Section 52 of the *Land Administration Act*

1997 requires a Council resolution to be provided as part of a submission to the Department of Planning, Lands and Heritage (DPLH).

Comment

The Council endorsed Coodanup Foreshore Reserve Landscape Masterplan, incorporated the requirement for infrastructure upgrades including the addition of irrigation to the Central Recreation zone. Initial investigations identified there was adequate water on the foreshore which could be utilised to supplement the existing water levels, however, DWER has since advised that any abstraction of water is required to be a minimum 200 metres away from the wetland zone.

Other alternative locations have been identified including drilling a superficial aquifer bore at Beacham Street (verge area) or connecting to the existing Leederville aquifer bore mainline however this remains fully allocated and the bore is an ageing asset (drilled in 1995). These options are not preferred as they are a significant distance from the Central Recreation zone and will require more pipe infrastructure which will also increase the cost of the project.

The preferred option, Duncan Road/Peel Parade ROWs, involves drilling a superficial aquifer production bore within the Duncan Road reserve and, subject to an adequate water source being found, drawing water through water pipes to be installed underground through the length of the ROWs across Peel Parade to the foreshore, where the water would either be stored in a storage tank (road side behind the existing ablutions) or placed underground.

Private right of ways or Pedestrian Accessways are often the “balance of title” contained in a parent lot and still registered to the original developer, often this is a deceased person or deregistered company. These remnant parcels are intended to be transferred to the Crown for the management of the local authority and used by the public for access purposes, however in some circumstances the final transfer of the remnant parcel is not progressed and as such the lots remain in the name of the original developer.

The City has recognised that private right of ways, which have occurred from older subdivisions, are generally being used by the public. Over time, City officers will progress the transfer of these ROWs, where the general public use the land, to be transferred to the Crown for vesting under a formal management order. This will ensure the land is managed by the City into the future in accordance with community requirements and City and Planning guidelines.

Section 52 of the *Land Administration Act 1997* (LAA) provides for a local government to request the Minister for Lands to close a right of way by acquiring the land as Crown land where the land is designated for a public purpose on a plan of survey or sketch plan; subject to completion of a comprehensive consultation process including advertising of the proposal, giving notification to the current landowner, adjoining landowners and public utility providers, with all parties to be provided with a minimum 30-day notice period to lodge objections.

Upon consultation with DPLH it was confirmed that, in accordance with section 52.7 of the LAA, neither the current landowner, nor any abutting landowners who may have easement benefits under section 167 of the LAA, are entitled to compensation due to the proposed change in land tenure.

The consultation process has been undertaken, with key outcomes as follows:

1. Current landowner – City officers were required to obtain two Grants of Probate (including Wills) through the Supreme Court of Australia to establish that the current legal owner is a descendent of the original landowner. City officers have subsequently met with the family and obtained written consent to the proposed dedication to the Crown.
2. Adjoining landowners – Letters were sent out to all adjoining landowners, with only one response received. Comments are contained with the consultation table below.

3. Public Utility Providers

- a. Water Corporation sewerage infrastructure runs between the middle of the two lots as shown on the aerial above. City officers have advised that this infrastructure will remain, as it is too costly and disruptive to relocate the Water Corporation infrastructure.
- Whilst there does not appear to be any other infrastructure located within the ROW land, there is evidence of such within the road reserves at each end of the ROWs and this will be managed in accordance with standard practices.

4. The Department of Planning, Lands and Heritage (DPLH) has been consulted and advised that they do not have any objection to the City's proposal, subject to the reinstatement of the land following any installation of infrastructure, and the continued use of the ROW by the public for pedestrian access purposes to the foreshore.

5. An advertisement was placed in the Mandurah Mail to advise the general public of the proposal and gave a 30-day notice period to lodge any objections; no responses received.

Consultation

Owner / Address	Submission (Summarised comments)	Comment
1. P. Williams	a. Confirmed that he is the legal descendant and current landowner. b. No objection to the proposal.	a. Noted. b. Noted.
2. S & D P Const	a. Extremely concerned that any water storage tank to be installed on the foreshore might block their views and devalue their property. b. Prepared to take legal action if this occurs.	a. Any works undertaken within the ROW will remain underground, there will be no physical change to the ROW. The Coodanup Foreshore Reserve Landscape Masterplan details the proposed infrastructure that will be constructed on the foreshore and it is advised that the landowner continues to be engaged in the consultation process for the development as it occurs. b. Noted
3. Cachet Developments P/L	a. No response.	
4. R & P N Langoulant 1	a. No response.	
5. D R Mullen 1	a. No response.	
6. G J & J M Green	a. No response.	
7. D B & T Rand	a. No response.	
8. Department of Planning	a. No objection, subject to reinstatement of the ROW post installation of the water pipes, and continued usage by the public for access purposes.	a. Noted.
9. Water Corporation	a. Dial Before You Dig (DBYD) confirmed <u>sewerage infrastructure</u> contained within the ROW land.	a. Noted.

	b. No objection to the proposal. c. Provided standard guidelines for working near infrastructure.	b. Noted. c. Noted.
10. Western Power	a. DBYD confirmed no infrastructure held within the ROW land but is held within the road reserves at the entrance points to the ROW. b. Provided standard guidelines for working near infrastructure.	a. Noted. b. Noted.
11. NBN	a. DBYD and NBN confirmed no infrastructure held within ROWs. b. Provided standard guidelines for working near infrastructure.	a. Noted. b. Noted.
12. Atco	a. DBYD confirmed no infrastructure held within the ROW. b. Atco advised no objection to the proposed change in tenure. c. DBYD provided standard guidelines for working near infrastructure.	a. Noted. b. Noted. c. Noted.
13. Telstra	a. DBYD confirmed no infrastructure within the ROWs and provided guidelines for working near infrastructure.	a. Noted.
14. Mandurah Mail - Public Notices - 20 May 2021	a. No responses.	

Statutory Environment

- Section 41 *Land Administration Act 1997* – Reserving Crown land, Minister's powers as to - subject to Section 45(6), the Minister may be order reserve Crown land to the Crown for one or more purposes in the public interest;
- Section 46 *Land Administration Act 1997* – The Minister may by order place the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under Section 41.
- Section 52 *Land Administration Act 1997* – Local government may ask the Minister to acquire as Crown land certain land in district, any (b) private road within the district of the local government (in this section called the subject land);
- Regulation 6(a) *Land Administration Regulations 1998* – Procedures to be followed by local government before requesting acquisition of private road (Act s. 52(1)(b)). The local authority must (a) resolve to make the request detailing the relevant resolution was passed by Council (b) give reasons for the proposed request for the Minister to acquire the land(c) give a sketch of the land to the Minister and persons given notice under section 52 (3)(a) of the Act, (d)giving written evidence the local authority has taken reasonable steps to identify all person required to be given notice (e) supply the Minister with copies of submissions relating to the proposed request and evidence of notice and advertisement under section 52(3) of the Act (f) give to the Minister written confirmation that the local authority has complied with section 52(3) of the Act.

Policy Implications

NA

Financial Implications

The City is undertaking the maintenance works when required. City officers have confirmed through the City's insurers that the City does not have insurance over this land, but rather "protections" as part of its membership under the discretionary mutual scheme that it is part of, and there wouldn't be any incremental costs in terms of the overall public liability premium as a result of the vesting.

The Coodanup foreshore is currently a dry reserve with no access to a water supply for irrigation. The proposed Coodanup foreshore upgrade will consist of approximately 1.0 hectare of recreational greenspace or 6000 kilolitres of water per annum. The existing groundwater supply nearest to the area is fully subscribed (Leederville groundwater supply), ageing infrastructure (early 90s installation) and would require at least 300 metres of mainline connection and residential verge installation works.

The proposed irrigation water supply infrastructure has been approved and licensed by the Department of Water and Environmental Regulation and would require a much shorter mainline installation (130 metres), with minimal impact to existing residential verges. Future ongoing maintenance for the proposed water infrastructure would also be supported by ease of access to the system through the provision of ROW's.

Risk Analysis

Nil

Strategic Implications

The following strategies from the City of Mandurah Strategic Community Plan 2020 – 2040 are relevant to this report:

Social:

- Facilitate safe neighbourhoods and lifestyles by influencing the built form through urban design.

Organisational Excellence:

- Ensure the City has the capacity and capability to deliver quality services and facilities through accountable and transparent business practices, governance, risk and financial management.

Conclusion

Two privately owned right of ways between Duncan Road and Peel Parade, Coodanup, have been identified as an appropriate cost effective option for the installation of critical water infrastructure to support the impending foreshore upgrade, however, as the ROWs are still held in private ownership they must be transferred to the Crown for vesting to the City under a management order before they can be utilised for this purpose.

As the land will still predominantly be used for public access through to the foreshore, a purpose of Pedestrian Accessway will be applied to the management order thus ensuring the land is managed in accordance with City and Planning guidelines for such land parcels.

Officers have undertaken the actions required in accordance with section 52 of the *Land Administration Act 1997* to enable submission to the DPLH for approval. Council is requested to endorse the submission to the Minister for Lands for the transfer of the right of ways, being Lot 66 on Plan 6616 and Lot 266 on Plan 6698, to the Crown for subsequent vesting to the City.

RECOMMENDATION

That the Committee of Council recommend that Council:

- 1 Approves submission to the Minister for Lands for acquisition as Crown land of the private right of ways known as Lot 66 on Plan 6616 and Lot 266 on Plan 6698, pursuant to section 52(1)(b) of the *Land Administration Act 1997*;**
- 2 Approves submission to the Minister for Lands requesting for subsequent reservation of Lot 66 on Plan 6616 and Lot 266 on Plan 6698 with a Management Order to be issued in favour of the City of Mandurah for the purpose of “Pedestrian Accessway.”**

3	SUBJECT:	Code of Conduct Complaints Management Policy
	DIRECTOR:	Business Services
	MEETING:	Committee of Council
	MEETING DATE:	10 August 2021

Summary

In accordance with regulation 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* (Model Code of Conduct Regulations) and the City of Mandurah Code of Conduct for Elected Members, Committee Members and Candidates (the Code of Conduct), Council is required to develop a procedure for dealing with complaints relating to an alleged breach of the Code of Conduct.

Following extensive consultation with Elected Members and consideration of the Western Australian Local Government Association (WALGA) Model Code of Conduct Behaviour Complaints Management Policy, the Code of Conduct Complaints Management Council Policy (Policy) has now been drafted (detailed in Attachment 3.1).

The Policy establishes a framework for an effective and transparent complaints handling process and ensures that the principles of procedural fairness and natural justice apply to all complaints under this Policy.

The Committee is requested to consider the Code of Conduct Complaints Management Council Policy and make a recommendation to Council to adopt the Policy.

Disclosure of Interest

Nil

Previous Relevant Documentation

- G.11/2/21 23 February 2021 Code of Conduct and CEO Standards

Background

As part of the *Local Government Legislation Amendment Act 2019* introduced in September 2019, section 5.103 was inserted into the *Local Government Act 1995* (the Act) to make provisions around the prescription of a model code of conduct for elected members, committee members and local government election candidates. Section 5.104 of the Act was also inserted requiring local governments to prepare and adopt a code of conduct to be observed by council members, committee members and candidates that incorporates the provisions stated in the model code.

On 3 February 2021, the *Local Government Legislation Amendment Act 2019* was finalised resulting in the *Local Government (Administration) Amendment Regulations 2021* and *Local Government (Model Code of Conduct) Regulations 2021* taking effect.

Comment

In accordance with section 5.104 of the Act, Council adopted a Code of Conduct for Elected Members, Committee Members and Candidates at its meeting of 23 February 2021. The Code of Conduct reflects the Model Code of Conduct Regulations as prescribed by section 5.103(1) of the Act which includes:

- general principles to guide behaviour – (Division 2 of Model Code of Conduct Regulations)
- requirements relating to behaviour – (Division 3 of Model Code of Conduct Regulations)
- provisions specified to be rules of conduct – (Division 4 of Model Code of Conduct Regulations)

The Code of Conduct sets out principles and standards of behaviour Elected Members, Committee Members and Candidates must observe and is intended to promote accountable and ethical decision-making and conduct.

As required by regulation 15(2) of the Model Code of Conduct Regulations and the Code of Conduct, Council is required to have a procedure for dealing with complaints relating to a breach of Division 3 – Behaviour of the Code of Conduct. Division 3 of the Code of Conduct sets the standards of behaviour which reflect the general principles outlined in Division 2. It is the individual responsibility of Elected Members, Committee Members and Candidates to demonstrate, promote and support professional and ethical behaviour as provided in the Code of Conduct. The behaviours include personal integrity, relationships with others and conduct at council or committee meetings.

Division 3 also sets out the mechanism for dealing with the alleged breaches of behaviours outlined in the Code of Conduct. The Model Code of Conduct Regulations requires Council to be the decision-maker for determining whether it was more likely that the breach of the Code of Conduct occurred than that it did not occur.

Regulation 11 of the Model Code of Conduct Regulations provides that a person can make a complaint alleging a breach of the Code of Conduct within one month of the alleged breach occurring. The regulation also provides a process for responding to alleged breaches.

Where a local government makes a finding that the alleged breach has occurred, any action to address the behaviour is outcomes focused aiming to restore positive working relationships and prevention of further breaches. The action that a local government can require a person to whom the complaint relates can be one or more of the following:

- engage in mediation;
- undertake counselling;
- undertake training; and/or
- other action the local government considers appropriate.

In accordance with Division 4 of the Model Code of Conduct Regulations, where a person does not comply with the action required by Council, it is considered a contravention of a rule of conduct and the Elected Member commits a minor breach.

Code of Conduct Complaints Management Council Policy

The Policy establishes a framework for an effective and transparent complaints management process and requires the principles of procedural fairness and natural justice to apply to all complaints under this Policy. The Policy has been drafted on the basis of minimising both actual and perceived bias due to conflict of interests, by requiring the engagement of an Independent Complaints Assessor in the early stage of the complaint process.

To ensure transparency of the complaints process, the Policy provides detailed information on the procedural components of how complaints will be managed.

A summary of the key components of the Policy is below:

Authorised Person

The Chief Executive Officer (CEO) or the Director Business Services where the complainant is the City's CEO, are recommended to be appointed as the Authorised Persons to receive complaints and the withdrawal of complaints.

At the Ordinary Council Meeting of 23 February 2021, Council appointed the Mayor and CEO as the Authorised Persons. As the Policy requires the procurement of an external Independent Complaints Assessor (in accordance with Council's Procurement Policy CPM-02), Council is requested to remove the

Mayor as an Authorised Person and approve the Director of Business Services to be an Authorised Person when the complainant is the CEO.

Complaint Process

The Independent Complaints Assessor is an impartial third party, specialising in complaints management and required to undertake the functions in accordance with the proposed Policy. It is a key responsibility of the Independent Complaint Assessor to ensure that the principles of procedural fairness and natural justice are upheld and maintained throughout the process. The Policy requires that all processes must be conducted without bias and in an impartial and objective manner without any actual or perceived conflict of interest.

The Policy provides two complaints pathways:

- 1 Alternative Dispute Resolution which may support both parties reaching a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Alternative Dispute Resolution requires the consent of both parties to the Complaint and may not be appropriate in all circumstances. If a complaint is resolved through this pathway and the complainant withdraws their complaint the matter will be finalised and will not progress to Council.
- 2 Complaints managed through investigation will result in the development of a Complaint Report and proposed Plan which will be presented to Council as a confidential report for determination. It is a requirement of the Code of Conduct that the respondent has an opportunity to be consulted on the Plan. As such the Policy provides reasonable opportunity for the respondent to make a submission.

Following the investigation, the Independent Complaints Assessor will prepare a Complaint Report for Council that will include:

- the substance of the complaint;
- the nature and extent of the investigation into the complaint;
- the evidence obtained during the investigation into the complaint, including the complaint documents, the respondent documents and any relevant attachments;
- outline the process followed, including how the Respondent was provided with an opportunity to respond to complaint;
- include recommendations on each option that is available for Council;
- include reasons for each recommendation; and
- any recommended plan prepared to address the behaviour of the person to whom the complaint relates.

Council's determination

In accordance with the Code of Conduct, Council will determine matters relating to complaints, including:

- a. Dismissing a behaviour complaint and providing reasons for any such dismissal.
- b. Making a finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur.

Where a finding is made that a breach has occurred, determining:

- a. To take no further action; or
- b. Prepare and implement a Plan to address the behaviour of the person to whom the complaint relates.

In deciding whether to take action, or prepare and implement a Plan, Council may consider:

- the nature and seriousness of the breach(es);
- the respondent's submission in relation to the contravention;

- the respondent and complainant's willingness to participate in the complaint management process;
- whether the respondent has breached the Code of Conduct knowingly or carelessly;
- likelihood or not of the respondent committing further breaches of the Code of Conduct;
- personal circumstances at the time of conduct; and
- any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

The Policy also includes the expectations for all parties in regards to confidentiality, conflict of interest and consultation.

City Officers recommend that the Policy be reviewed regularly to ensure improvements are incorporated in a timely manner to ensure it is effective in guiding and supporting the complaints management process.

Over the last five years, Council and the City officers have actively contributed to the Local Government reform agenda including providing multiple submissions to Department Local Government Sports and Cultural Industries (DLGSC), Minister for Local Government and WA Local Government Association (WALGA) in relation to amendments to the Act. More recently, at the Special Council Meeting of 6 October 2021 Council adopted a response to the Local Government Review Panel Final Report which supported the establishment of an Office of the Independent Assessor. The Councils adopted position is stated below:

- Recommendation 59 recommends the establishment of an Office of the Independent Assessor which would be an independent body to receive, investigate and assess complaints, removing the CEO from processing and determining complaints. The City generally supports Recommendations 59 (a) to (f) and would welcome further information on how this Office will function.

It is acknowledged that the Standards Panel has in recent times experienced resourcing pressures. The City supports the creation and resourcing of an independent Office; however, it is recommended that the DLGSC should aim to address the shortfalls within the existing model when considering the implementation of a new Office.

- Recommendation 60 states that consideration should be given to the appropriate recognition and management of complaints by an Elected Member against a CEO or other senior officer, with one option for these to be investigated by the Office of the Independent Assessor. The City supports the management of such complaints by an independent Office. The management of complaints can have a detrimental impact on the relationships between the CEO, Mayor and Council and being managed independently and objectively will provide much benefit.

WALGA also shared similar concerns regarding the complaints mechanism introduced in the *Local Government (Model Code of Conduct) Regulations 2021*. In particular, the role of Council in deciding complaints and a lack of mechanisms for managing conflicts of interest are problematic.

At its meeting on 2 December 2020, State Council resolved that WALGA:

- Does not support the inclusion of local level complaints about alleged behavioural breaches and Local Governments dealing with complaints provisions in Division 3, Clauses 10 and 11; and
- Supports an external oversight body to manage local level complaints involving council members as prefaced in the Local Government Review Panel Report, City of Perth Inquiry Report and Select Committee into Local Government Report, to be considered in a future Local Government Act.

The City will continue to advocate for an independent decision maker and for Elected Members to have appeal rights to a decision or action plan.

Statutory Environment

Local Government (Model Code of Conduct) Regulations 2021

11. **Complaint about alleged breach**

- (1) A person may make a complaint, in accordance with subclause (2), alleging a breach of a requirement set out in this Division.
- (2) A complaint must be made —
 - (a) in writing in the form approved by the local government; and
 - (b) to a person authorised under subclause (3); and
 - (c) within 1 month after the occurrence of the alleged breach.
- (3) The local government must, in writing, authorise 1 or more persons to receive complaints and withdrawals of complaints.

12. **Dealing with complaint**

- (1) After considering a complaint, the local government must, unless it dismisses the complaint under clause 13 or the complaint is withdrawn under clause 14(1), make a finding as to whether the alleged breach the subject of the complaint has occurred.
- (2) Before making a finding in relation to the complaint, the local government must give the person to whom the complaint relates a reasonable opportunity to be heard.
- (3) A finding that the alleged breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- (4) If the local government makes a finding that the alleged breach has occurred, the local government may —
 - (a) take no further action; or
 - (b) prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (5) When preparing a plan under subclause (4)(b), the local government must consult with the person to whom the complaint relates.
- (6) A plan under subclause (4)(b) may include a requirement for the person to whom the complaint relates to do 1 or more of the following —
 - (a) engage in mediation;
 - (b) undertake counselling;
 - (c) undertake training;
 - (d) take other action the local government considers appropriate.
- (7) If the local government makes a finding in relation to the complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of —
 - (a) its finding and the reasons for its finding; and
 - (b) if its finding is that the alleged breach has occurred — its decision under subclause (4).

13. **Dismissal of complaint**

- (1) The local government must dismiss a complaint if it is satisfied that —
 - (a) the behaviour to which the complaint relates occurred at a council or committee meeting; and
 - (b) either —
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the person responsible for the behaviour has taken remedial action in accordance with a local law of the local government that deals with meeting procedures.
- (2) If the local government dismisses a complaint, the local government must give the complainant, and the person to whom the complaint relates, written notice of its decision and the reasons for its decision.

14. **Withdrawal of complaint**

- (1) A complainant may withdraw their complaint at any time before the local government makes a finding in relation to the complaint.

- (2) *The withdrawal of a complaint must be —*
 (a) *in writing; and*
 (b) *given to a person authorised under clause 11(3).*

15. Other provisions about complaints

- (1) *A complaint about an alleged breach by a candidate cannot be dealt with by the local government unless the candidate has been elected as a council member.*
(2) *The procedure for dealing with complaints may be determined by the local government to the extent that it is not provided for in this Division.*

Policy Implications

Code of Conduct for Elected Members, Committee Members and Candidates
Council Procurement Policy POL-CPM 02

Risk Implications

The determination of Division 3 Behaviour Complaints by Council is effectively placing Elected Members in the challenging role of considering complaints about an Elected Member. The Policy has been drafted on the basis of minimising both actual and perceived bias due to conflict of interests, through the engagement of an Independent Complaints Assessor to carry out the management of the complaint. In addition, the Policy focuses on resolving the complaint in the early stages through Alternative Dispute Resolution by providing both parties with an opportunity to resolve the complaint.

Financial Implications

The average cost to undertake a complaint management process is not yet known. A scope of works will be agreed to before the complaint process commences and will required the Authorised Person to monitor expenditure to ensure that the complaint is managed in an efficient and effective manner.

Strategic Implications

The following strategy from the City of Mandurah Strategic Community Plan 2020 – 2040 is relevant to this report:

Organisational Excellence:

- Ensure the City has the capacity and capability to deliver quality services and facilities through accountable and transparent business practices, governance, risk and financial management.

Conclusion

The Code of Conduct Complaints Management Policy has now been drafted for adoption by Council.

NOTE:

- Refer **Attachment 3.1 Code of Conduct Complaints Management Council Policy**

RECOMMENDATION

That the Committee of Council recommend that Council:

- 1 Authorise the removal of the Mayor and approved the appointment of the Director of Business Services to receive complaints and withdrawal of complaints in accordance with regulation 11(3) of the *Local Government (Model Code of Conduct) Regulations 2021*.**

- 2 Adopt the Code of Conduct Complaints Management Council Policy as per Attachment 3.1.***
- 3 Advocate to the State Government for an Independent decision making body to determine any breaches of the City of Mandurah Code of Conduct for Elected Members, Committee Members and Candidates and allow appeal rights to an Elected Member for any decision made.**

****ABSOLUTE MAJORITY REQUIRED****

Council Policy

1. Policy Objective

In accordance with regulation 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and the City of Mandurah Code of Conduct for Elected Members, Committee Members and Candidates (the Code of Conduct), the Policy details the process for dealing with complaints about alleged breaches of the Code of Conduct.

This Policy establishes a framework for an effective and transparent complaints handling processes . The principles of procedural fairness and natural justice apply to all complaints under this Policy.

2. Policy Statement

In accordance with section 5.104 of the *Local Government Act 1995* (the Act), Council adopted a Code of Conduct for Elected Members, Committee Members and Candidates.

The Code of Conduct reflects the model code of conduct prescribed by section 5.103(1) of the Act which includes:

- general principles to guide behaviour – Division 2
- requirements relating to behaviour – Division 3
- provisions specified to be rules of conduct – Division 4

The Code of Conduct sets out principles and standards of behaviour elected members, committee members and candidates must observe and is intended to promote accountable and ethical decision-making and conduct.

For the purposes of this Policy a complaint is one that alleges a breach of Division 3 – Behaviour, of the Code of Conduct.

3. Applicability

This Policy applies to:

- a. Elected members, committee members and candidates where a complaint has been received by the City under the City's Code of Conduct.
- b. Authorised Person; and
- c. Independent Complaints Assessor.

A complaint about an alleged breach by a candidate cannot be dealt with unless the candidate has been elected as an Elected Member for the City of Mandurah.

This Policy does not apply to complaints involving allegations of:

- serious improper conduct, corruption, fraud or other criminal conduct which must be referred to the appropriate authority
- minor breach of Division 4 – Rules of Conduct of the *Local Government (Model Code of Conduct) Regulations 2021* which must be referred to the appropriate authority

4. Procedural Fairness

4.1 Principles

The principles of procedural fairness and natural justice, will apply when dealing with a Complaint under this Policy, including:

- a. Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a Plan implemented;
- b. Council should be objective and impartial, with an absence of bias or the perception of bias; and
- c. any findings made will be based on proper and genuine consideration of the evidence.

4.2 Consistency

The application of this Policy should lead to consistency in process and outcomes. While each Complainant and Respondent will be dealt with according to their circumstances, and each Complaint considered and determined on its merits, similar circumstances will result in similar decisions.

5. Making a complaint

In accordance with Clause 11 of the Code of Conduct, a complaint must be made within one month after the occurrence of the alleged breach.

The complaint must be in writing using the approved Complaints Form which requires the following:

- a. Name and contact details of the person who is making the complaint (anonymous complaints will not be accepted);
- b. Name of the Elected Member, Candidate or Committee Member who allegedly breached the Code of Conduct;
- c. Details of the alleged breach of a requirement of Division 3 – Behaviour, accompanied with supporting information to be attached to the Form; and
- d. Marked confidential and submitted to the Authorised Person via codecomplaints@mandurah.wa.gov.au or delivered to 3 Peel Street Mandurah WA 6210.

In relation to candidate complaints no action will be taken until the results of the election are declared by the Returning Officer. If the Respondent is elected, then the complaint will be dealt with in accordance with this Policy.

If the Respondent is not elected, the Authorised Person will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with.

6. Authorised Person

In accordance with Clause 11(3) of the Code of Conduct:

- a. The Chief Executive Officer (CEO) is authorised to receive complaints and withdrawal complaints; or
- b. Where the Complainant is the CEO, the Director of Business Services is authorised to receive complaints and withdrawal complaints.

The Authorised Person is responsible for:

- a. receiving complaints in accordance with Part 7 of this Policy;
- b. communicating with the complainant to advise the complaint has been accepted or rejected in accordance with this Policy and the Code of Conduct;
- c. engaging an Independent Complaints Assessor in accordance with the Council Procurement Policy POL CPM-02;

- d. liaising with and providing administrative support to the Independent Complaint Assessor appointed under this Policy;
- e. liaising with the City to facilitate the calling and convening of Council meetings if required;
- f. taking necessary steps to terminate the complaint if the complaint is withdrawn in accordance with Part 9 of this Policy; and
- g. undertaking their functions in accordance with this Policy.

7. Receiving Complaints

7.1 Processing a Complaint

Within 7 days of a complaint being lodged, the Authorised Person will ensure that the complaint meets the following requirements:

- a. has been made within one month after the occurrence of the alleged breach;
- b. is in writing and within the approved Form and all sections of the Form are complete;
- c. the complaint is relating to an alleged breach of Division 3 – Behaviour of the Code; and
- d. the complaint is about a current Elected Member or Committee Member or a candidate that has nominated for the upcoming local government election;

7.2 Complaints to be actioned

For complaints that meet these requirements as per Part 7 of this Policy, the Authorised Person will:

- a. confirm receipt of the Complaint;
- b. provide a copy of this Policy;
- c. explain the application of confidentiality;
- d. advise that the complaint has been referred to an Independent Complaints Assessor for further action.

Note: Where the complaint relates to a candidate of the upcoming local government election, no action will be taken unless the candidate is elected into office.

7.3 Complaints not to be actioned

For complaints that do not meet the requirements as specified in Part 7.1 of this Policy, the Authorised Person will give notice as to the reasons the complaint will not be actioned.

A complaint shall not be actioned if the complaint meets at least one of the following:

- a. It is withdrawn by the Complainant;
- b. The alleged breach is greater than one month;
- c. The Alleged conduct relates to a person who is not an elected member of the City, or a person who was a candidate and was not elected;
- d. The allegation is not a breach of the Standards of Behaviour set out Division 3 of the Code of Conduct;
- e. Not on the Complaints Form approved by Council nor does the complaint provide sufficient information or evidence;
- f. Complaint made anonymously;
- g. Alleging a breach of the Rules of Conduct Division 4 of the Code of Conduct;
- h. Complaint has been dealt with by the presiding member at a Committee or Council Meeting;
- i. Duplicate of a complaint made by the same person for the same matter; or
- j. The complaint is of the same subject matter that has been dealt with, or dismissed by the local government.

8. Independent Complaints Assessor

An Independent Complaints Assessor will be appointed by the Authorised Person to conduct the complaints process in accordance with this Policy. Prior to commencing the complaints process, the Authorised Person will develop a scope of work through consultation with the Independent Complaints Assessor.

The Independent Complaints Assessor is an impartial third party, specialising in complaints management, required to undertake the functions in accordance with this Policy and must ensure that the principles of procedural fairness and natural justice are upheld and maintained throughout the process. All complaints processes must be conducted without bias and in an impartial and objective manner without any actual or perceived conflict of interest.

To be eligible to be engaged as the Independent Complaints Assessor, a person must, at a minimum, meet the following requirements:

- a. an understanding of local government; and
- b. knowledge and experience of investigative processes including but not limited to procedural fairness requirements; and
- c. knowledge and experience of one or more of the following:
 - i. investigations
 - ii. law
 - iii. public administration
 - iv. alternative dispute resolution.

In accordance with this Policy, a complaint must be managed through the following complaint processes:

- a. Alternative Dispute Resolution in accordance with Part 8.3 of this Policy; and/or
- b. Investigation in accordance with Part 8.4 of this Policy.

Complaints must be managed in a cost effective and efficient manner. In instances where the scope of work expands the Independent Complaints Assessor they must seek approval from the Authorised Person.

8.1 Notice to the Complainant

Within 7 days after receiving a Complaint from the Authorised Person, the Independent Complaints Assessor will provide written notice to the Complainant that:

- a. confirms receipt of the Complaint;
- b. provides a copy of this Policy which includes the complaint management pathways;
- c. outlines the process that will be followed and the possible outcomes;
- d. explains the application of confidentiality to the complaint; and
- e. if necessary seeks clarification or additional information.

The Complainant will be provided with 7 days to provide clarification or additional information (if necessary). All reasonable attempts will be made to contact the Complainant.

In the event that the Complainant does not respond to any request for clarification or additional information, the Independent Complaints Assessor shall write to the Complainant using the contact information provided on the Complaint Form advising them that they have 14 days to provide a response.

If the Complainant does not respond then the complaint will be managed in accordance with Part 8.4 of this Policy.

8.2 Notice to the Respondent

Within 14 days after receiving a Complaint from the Authorised Person, the Independent Complaints Assessor will provide written notice to the Respondent that:

- a. advises that a Complaint has been made in accordance with the Code of Conduct;
- b. includes a copy of the Complaints Form (in accordance with clause 14 – confidentiality) and any supporting information provided;
- c. provides a copy of this Policy which includes the complaint management pathways;
- d. outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes; and
- e. if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

The Respondent will be invited to make a written submission in relation to the matter within at least 14 days. All reasonable attempts will be made to contact the Respondent.

If the event that the Respondent requests an extension of time to provide a response, the Independent Complaints Assessor may grant an extension of up to 14 days. No additional extensions are to be granted.

If the Respondent fails to provide a response within the period stated (including the extension of time) the Independent Complaints Assessor shall write to the Respondent's last known place of residence or email to the Respondent's email address, advising them that they have 7 days to provide a response.

If the Respondent does not respond then the complaint will be managed in accordance with Part 8.4 of this Policy.

8.3 Alternative Dispute Resolution

Alternative Dispute Resolution may support both parties to reach a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Alternative Dispute Resolution requires the consent of both parties to the Complaint and may not be appropriate in all circumstances.

To commence the process, the Independent Complaints Assessor will, as the first course of action upon providing a notice, offer the Complainant and the Respondent the option of Alternative Dispute Resolution. If both parties agree to participate in Alternative Dispute Resolution, the Independent Complaints Assessor will pause the formal process.

The objective of Alternative Dispute Resolution is to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the Complaint, in accordance with Part 9 of this Policy.

If Alternative Dispute Resolution is commenced, both the Complainant and Respondent may decline to proceed with the process at any time. The process may also be terminated on the advice of the Independent Complaints Assessor.

If Alternative Dispute Resolution is terminated or does not result in the withdrawal of the Complaint, the Independent Complaints Assessor will resume an investigation as required under Part 8.4 of this Policy.

8.4 Investigation

The Independent Complaints Assessor is given the necessary powers and authority to undertake an investigation process in accordance with the Code of Conduct, this Policy and industry best practice.

The Independent Complaints Assessor may:

- a. inquire with all parties to provide any evidence or statements relevant to the complaint;

- b. obtain any information from other parties in relation to policies, procedures and practices including access to relevant records or witness statements; and
- c. seek advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.

The Independent Complaints Assessor may take evidence in the form of one or more of the following:

- a. oral or written evidence;
- b. documentary evidence; and
- c. expert or technical evidence.

All investigations of a complaint are to observe due process and procedural fairness. Procedural fairness for an investigation shall include:

- a. ability for the Respondent to provide an opportunity to respond to the complaint;
- b. all parties given a reasonable opportunity to respond;
- c. careful consideration of all evidence obtained during the course of the investigation;
- d. maintaining confidentiality;
- e. conducting the investigation in accordance with the Code of Conduct and this Policy;
- f. taking into account relevant considerations;
- g. investigation recommendations being appropriately documented;
- h. ensuring any conflicts of interest are managed appropriately;
- i. acting fairly, without bias and in an impartial manner; and
- j. conducting the investigation without undue delay.

8.5 Records Management

The Independent Complaints Assessor must comply with the records management requirements as outlined in the contract for service. Once the investigation is finalised all records must be provided to the Authorised Person who will ensure that the records are maintained in accordance with the City's record-keeping system with restricted access to ensure confidentiality.

9. Complaint Report

The complaints process must ensure that the Respondent is provided with a reasonable opportunity to respond before forming any opinions, or drafting the Complaint Report, proposed Plan or recommendations. This includes evidence to Council must be of a sufficient quality and relevance to lead to a conclusion the conduct alleged, on the balance of probabilities, likely occurred.

The Independent Complaints Assessor will prepare a Complaint Report for Council that will include:

- a. the substance of the complaint;
- b. the nature and extent of the investigation into the complaint;
- a. the evidence obtained during the investigation into the complaint, including the complaint documents, the Respondent documents and any relevant attachments;
- c. outline of the process followed, including how the Respondent was provided with an opportunity to be heard;
- d. a statement of reasons as to why the matter was one that could not or should not be resolved by alternative means;
- e. a description of any attempts made to resolve the matter by use of alternative means (Alternative Dispute Resolution);
- f. include recommendations on each decision that may be made by Council;
- g. include reasons for each recommendation; and
- h. any recommended plan prepared to address the behaviour of the person to whom the complaint relates.

The Independent Complaint Assessor will liaise with the Authorised Person to include the Complaint Report in the Agenda for the Council Meeting. The Authorised Person will be responsible for the preparation of a Confidential Report which will include the Complaint Report and proposed Plan.

The Agenda will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with s.5.23(2) of the Act.

9.1 Submission from Respondent

In accordance with clause 12(5) of the Code of Conduct, the Respondent must be consulted when preparing the Plan. All reasonable attempts will be made to contact the Respondent.

The Independent Complaints Assessor shall provide the Respondent with a copy of the findings included in the draft Complaint Report and proposed Plan. The Respondent will be invited to make a written submission which will be considered as part of the proposed Plan. A copy of the Respondents submission will also be provided within the Complaints Report. Council will consider any submissions made by the Respondent before adopting and implementing a proposed Plan.

The Respondent will be given 14 days to make a submission. In the event that the Respondent requests an extension of time to make a submission, the Independent Complaints Assessor may grant an extension of up to 7 days.

If the Respondent does not provide a submission or fails to respond within the time stated (including an extension of time), the Independent Complaints Assessor shall write to the Respondent advising that they have 7 days to provide a response.

In instances where Council decides to prepare an alternate Plan, Council must consult with the Respondent in accordance with clause 12(5) of the Code of Conduct. The Authorised Person will instruct the Independent Complaints Assessor to invite the Respondent to make a written submission.

The Respondent will be given 14 days to make a submission on the alternate Plan. In the event that the Respondent requests an extension of time to make a submission, the Independent Complaints Assessor may grant an extension of up to 7 days.

If the Respondent does not provide a submission or fails to respond within the time stated (including an extension of time), the Independent Complaints Assessor shall write to the Respondent advising that they have 7 days to provide a response.

If the Respondent does not provide a submission or fails to respond, the Independent Complaints Assessor will provide an updated Complaints Report outlining the consultation process undertaken on the alternate Plan. Council will consider the updated Complaints Report and make a determination in relation to whether Council approves the alternate Plan.

The Independent Complaints Assessor may at any time prior to issuing a draft Complaint Report and Plan, issue an amended Complaint Report and Plan to the Respondent in relation to the matter referred to them.

Where the Independent Complaints Assessor issues an amended Complaint Report and Plan, they must provide the Respondent with a further opportunity to make a written submission in response to the amended report within at least 14 days. The amended Complaint Report and Plan will be presented to Council for consideration once the Respondent has had an opportunity to provide comments in response to the amendments.

10 Withdrawal of complaint

A Complainant may withdraw their complaint at any time before Council makes a Finding in relation to the complaint.

The withdrawal of a Complaint must be in writing and given to an Authorised Person.

11 Council to make a determination

Decisions made under this Policy will reflect the principles of procedural fairness.

Council will determine matters relating to complaints, including:

- a. Dismissing a behaviour complaint and providing reasons for any such dismissal.
- b. Making a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur.

Where a Finding is made that a breach has occurred, determining:

- a. To take no further action; or
- b. Prepare and implement a Plan to address the behaviour of the person to whom the complaint relates.

11.1 Options for determination

Council will consider the Complaint Report and proposed Plan and give due regard to the recommendations. In accordance with the Code of Conduct the following decisions are available:

a. Dismissing a complaint

If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Council will determine whether or not to dismiss the Complaint in accordance with Clause 13 of the Code of Conduct and Part 10.2 of this Policy.

If the Council dismisses a Complaint, the Authorised Person must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 13.2 of the Code of Conduct. This action is to be undertaken in accordance with the *City of Mandurah Standing Orders Local Law 2016*. This concludes the process of this complaint.

If the Complaint is not dismissed, the processes outlined in this Policy must be followed.

b. Breach did not occur

If Council finds that the alleged Breach did not occur, the Authorised Person must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This action is to be undertaken in accordance with the *City of Mandurah Standing Orders Local Law 2016*. This concludes the process of this complaint.

c. Breach did occur

If Council finds that the alleged breach did occur, the Council will decide whether to take no further action in accordance with clause 12(4)(a) of the Code of Conduct or adopt the proposed Plan or prepare an alternate Plan to address the behaviour in accordance with clause 12(4)(b) of the Code of Conduct and this Policy.

i. No further action

If the Council decides to take no further action, the Authorised Person must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This action is to be undertaken in

accordance with the *City of Mandurah Standing Orders Local Law 2016*. This concludes the process of this complaint.

ii. **Determining a Plan**

Council may decide to adopt the proposed Plan or an alternate Plan. If Council decides to adopt an alternate Plan, Council must consult with the Respondent in accordance with clause 12(5) of the Code of Conduct. Council will consider any submissions made by the Respondent before adopting and implementing an alternate Plan, refer to Part 9.2 and 10.5 of this Policy.

11.2 Dismissal of a complaint

The Council must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code of Conduct if it is satisfied that:

- a. the behaviour to which the Complaint relates is a breach of Division 3 of the Code of Conduct and occurred at a Council or Committee Meeting; and
- b. either :
 - i. the behaviour was dealt with by the person presiding at the meeting; or
 - ii. the Respondent has taken remedial action in accordance with the *City of Mandurah Standing Orders Local Law 2016*.

11.3 Finding

A Finding that the alleged Breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur (refer clause 12(3) of the Code of Conduct).

This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a breach of a requirement of Division 3 of the Code of Conduct.

11.4 Action

In deciding whether to take no further action, or prepare and implement a Plan, the Council may consider:

- a. the nature and seriousness of the breach(es);
- b. the Respondent's submission in relation to the contravention;
- c. the Respondent and Complainants willingness to participate in the complaint;
- d. whether the Respondent has breached the Code knowingly or carelessly;
- e. whether the Respondent has remedied or rectified their conduct;
- f. the degree of reckless intention or negligence of the Respondent;
- g. the harm or potential harm to the reputation of the Council or the City in general arising from the conduct;
- h. likelihood or not of the Respondent committing further breaches of the Code;
- i. personal circumstances at the time of conduct; and
- j. any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

11.5 The Plan

The proposed Plan may include requirements for the Respondent to do one or more of the following:

- a. engage in mediation;
- b. undertake counselling;
- c. undertake training;
- d. take other action that Council considers appropriate (e.g. an apology).

The proposed Plan should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives expressed in the Code.

The proposed Plan may also outline:

- a. the actions to be taken to address the behaviour(s);
- b. who is responsible for the actions;
- c. any assistance the City will provide to assist the Respondent to achieve the intent of the Plan; and
- d. a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

If the Respondent has been consulted on the proposed Plan and Council makes no additions then a Notice of Council determination can be provided.

If the Council decides to prepare an alternate Plan, Council must consult with the Respondent in accordance with clause 12(5) of the Code of Conduct. The Council will consider any submissions made by the Respondent before adopting and implementing an alternate Plan. Refer to Part 9.4 of this Policy.

12 Notice of Council Determination

When Council makes a finding in relation to a complaint, written notice will be provided which includes:

- a. its finding and the reasons for its finding; and
- b. if its finding is that the alleged breach has occurred.

The Authorised Person must notify the Complainant and Respondent of Council's decision.

13 Non-compliance with plan

The Authorised Person will monitor compliance of a Council adopted Plan.

If the person subject of the complaint, fails to comply with the Plan, as adopted by Council, it will be a breach of clause 23 of the *Local Government (Model Code of Conduct) Regulations 2021* and reported as a minor breach to the Standards Panel.

14 Declaration of Interest

An Elected Member who is a Complainant or a Respondent should consider their responsibilities in relation to declaration of interests under the *Local Government Act 1995*.

An Elected Member who is a Complainant or a Respondent may choose to remove themselves from the agenda item deliberations relating to the Complaint.

15 Confidentiality

There is no direct statutory provision for confidentiality of behaviour breach allegations under the Act or *Local Government (Model Code of Conduct) Regulations 2021*. However, the Policy provides direction on how confidentiality will be applied.

15.1 Complainant and Respondent confidentiality

The City will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

- a. The name of the Complainant will be provided to the Respondent.

- b. Complainant's contact information (phone, email, address) will not be provided to the Respondent.
- c. Complainant's name and contact information will not be included in any publicly available documents such as meeting agendas or minutes.
- d. The Complainant should be aware that the Complaint Report may be subject to a Freedom Of Information (FOI) request, noting that they must be consulted before any documents are released, and exemptions may apply.

Complainants and Respondents will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the progress of their Complaint.

15.2 Authorised Person and Contractors

Authorised Person and contractors who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role. They must manage this information securely, and must not disclose or inappropriately use this information.

The Authorised Person must maintain confidentiality in accordance with the City of Mandurah Code of Conduct and any external contractors engage will be required to comply with confidentiality provisions within the applicable Contract.

16 Support

Elected Members have access to the Employee Assistance Program. The Program provides independent support for personal and work related problems by trained and qualified Counsellors.

17 Rules of Conduct Complaints – Division 4

Complaints regarding an allegation of a breach of Division 4 – Rules of Conduct are to be directed to the Standards Panel.

18 Serious or Criminal Complaints

Complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct which must be referred to the appropriate authority.

19 Definitions

Authorised Person – In accordance with clause 11 (3) of the Code:

The CEO is authorised to receive complaints and withdrawal complaints under the Code; or

Where the complainant is the CEO the Director of Business Services is authorised to receive complaints and withdrawal complaints under the Code.

Breach of Division 3 – Behaviour of the City of Mandurah Code of Conduct for Elected Members, Committee Members and Candidates.

Candidate means a candidate for election as an Elected Member, whose nomination has been accepted by the Returning Officer under s.4.49 of the Act, but does not include an Elected Member who has nominated for re-election. A person is a Candidate from the date on which their nomination is accepted, until the Returning Officer declares the election result in accordance with s.4.77 of the Act.

Code of Conduct Complaints Management

POL-GVN XX

Code of Conduct means the City of Mandurah Code of Conduct for Council Members, Committee Members and Candidates.

Complaint is one that alleges a breach of Division 3 – Behaviour of the City of Mandurah Code of Conduct for Elected Members, Committee Members and Candidates.

Complaint Report include the complaint documents, the respondent documents and any relevant attachments.

Complainant means a person who has submitted a Complaint in accordance with this Policy.

Committee means a committee of Council, established in accordance with s.5.8 of the Act.

Committee Member means a Council Member or other person who has been appointed by the Council to be a member of a Committee, in accordance with s.5.10(1) of the Act.

Independent Complaints Assessor means a person appointed by the Authorised Person in accordance with this Policy.

Finding means a finding made in accordance with clause 8.2(2) of the Code of Conduct as to whether the alleged Breach has or has not occurred.

Plan means a Plan that may be prepared and implemented under clause 8.2(5)(b) of the Code of Conduct, to address the behaviour of the person to whom the complaint relates (the Respondent), if a Finding has been made that a Breach has occurred.

Legislative Context

Local Government Act 1995

Local Government (Election) Regulations 1996

Local Government (Model Code of Conduct) Regulations 2021

Code of Conduct – Elected Members, Committee Members and Candidates

Responsible Directorate: Business Services

Responsible Department: Governance

Reviewer: Manager Governance, Procurement and Land

Creation date and reference: TBA

Last Review: N/A

Amendments			
Version #	Council Approval Date, Reference	Date Document In force	Date Document Ceased

4	SUBJECT:	Review of Trading Permit Guidelines
	DIRECTOR:	Business Services
	MEETING:	Committee of Council
	MEETING DATE:	10 August 2021

Summary

An administration review has been undertaken to ensure the Trading Permit Guidelines are relevant and reflect the current locations that an operator can trade as a result of the Western and Eastern Foreshore redevelopment. The review did not consider section three, Mobile Traders. The review included a change to section four relating to fees and charges, which now refers to the City of Mandurah Schedule of Fees and Charges. Section Five has been amended to change terminology to approval.

A review of section three of the guidelines, being Mobile Traders, will occur in 2022 and will include stakeholder engagement.

It is recommended that Council approve the amendments to the Trading Permit Guidelines to ensure the document is up-to-date ahead of the 2021/22 summer period.

Disclosure of Interest

Nil

Previous Relevant Documentation

- G.10/4/17 11 April 2017 Council endorsed the outcomes and inclusion of criteria for the Trading Permit Guidelines
- G.11/4/19 30 April 2019 Modifications to the Trading Permit Guidelines for semi-permanent/pop-up style activities to be included in the City Centre Waterfront Trading Locations and subject to an expression of interest process.
- G.21/10/20 27 October 2020 Council approved location WF2 and WF3 to be removed as locations for trading permits up until 30 June 2023.

Background

The Trading Permit Guidelines were endorsed in 2017 to provide guidance to operators who were interested in using City managed land to offer commercial, aquatic or mobile trading activities. The trading permits achieves the objective of utilising City parks and reserves to activate and enhance the vibrancy of the area whilst managing the local business brick and mortar businesses concerns about cost of operating compared to the mobile nature of trading permits.

The following are the components of the Trading Permit Guidelines:

Section One – Introduction – objectives, background, application, exemptions

Section Two – Commercial and Aquatic Operators – location, amenity and appearance, site requirements, maintenance and cleaning, public risk management, application, operations, assessment and selection process

Section Three – Mobile Traders - definitions, locations, site requirements, amenity and appearance, management, maintenance and cleaning, public risk management, application process, approval

Section Four - Fee structure

Section Five – Approval

Comment

An administration review has been undertaken to ensure the Trading Permit Guidelines are current (refer to Attachment 4.1). The following changes are recommended:

- 1.3 (a) to specify that Cruise Operators are excluded from the Trading Permit Guidelines
- 1.4(g) – inclusion that activities of Cruise Operators do not apply to the Trading Permit Guidelines, a definition of Cruise Operators and that a Cruise Operator must enter into a licence with the City of Mandurah and operate from the commercial jetty areas
- 2.1 – inclusion of reference that locations are designated for land and aquatic or just land based activities
- Figure 1 – removal of areas:
 - EF3 – Future Place Pod – This is likely to be agreed through a lease or licence agreement and not a trading permit arrangement
 - EF4 – Mandjar Bay Commercial Jetties - Operators will be required to enter into a licence agreement and not a trading permit arrangement
 - MB1 – MPAC Jetty – This is a public jetty and all commercial operators will be required to enter into a licence arrangement and not a trading permit
 - MB2 – TODs/Cicerello's Jetty – This is a public jetty and all commercial operators will be required to enter into a licence arrangement and not a trading permit
 - WF1 – This area is a safety risk if it is used for any commercial purposes
- Figure 1 - amendment
 - EF2 – Eastern Foreshore South – The location is for land based activities.
 - WF2 and WF3 to be available from 1 December 2021 – The City has received verbal confirmation that Kayaks 4 U will not be accepting the extension of the holding over period
 - Addition of areas that are designated for land based operators and land and aquatic operators
- Figure 2 – removal of area:
 - Mandjar Bay – Aquatic operators are required to enter into a licence agreement with the City
- Section 4 – remove fees specified in the table and refer to the City of Mandurah Schedule of Fees and Charges. This is a duplication and if the fees and charges change, City officers will also have to request for Council to amend the Trading Permit Guidelines
- Section 5 – replace the word Delegation with Approval

A copy of the existing City Centre Waterfront Trading Locations (Figure 1) is provided in Attachment 4.2 for comparison purposes.

A review of the Trading Permit Guidelines will occur in 2022 which will include a review of Section Three, Mobile Traders which will also include stakeholder consultation and engagement.

Consultation

Nil

Statutory Environment

City of Mandurah Local Government Property and Public Places Local Law 2016

Policy Implications

Trading Permit Guidelines

Financial Implications

There may be additional revenue that the City may receive removing commercial cruise operators from obtaining a trading permit as they will have to pay a licence to use the commercial jetties berths to operate.

Noting, that all existing commercial cruise operators in Mandurah will be on a licence arrangement before the 2021/22 summer period.

Risk Analysis

There is a reputational risk that an operator is interested in hiring an area that is no longer available as the Trading Permit Guidelines do not reflect the current areas that are available.

Strategic Implications

The following strategies from the City of Mandurah Strategic Community Plan 2020 – 2040 are relevant to this report:

Economic:

- Promote and foster business investment aimed at stimulating economic growth.
- Facilitate and advocate for sustainable local job creation and industry diversification.
- Actively partner and engage with business and industry to build Mandurah's entrepreneurial capacity and capability.

Organisational Excellence:

- Ensure the City has the capacity and capability to deliver quality services and facilities through accountable and transparent business practices, governance, risk and financial management.
- Ensure that our actions maintain a sustainable balance between economic growth, the environment and social values.

Conclusion

It is recommended that Council approve the tracked changes in the Trading Permit Guidelines as detailed in Attachment 4.1.

NOTE:

- Refer ***Attachment 4.1 Revised Trading Permit Guidelines***
Attachment 4.2 Existing City Centre Waterfront Trading Locations (Figure 1 of Trading Permit Guidelines)

RECOMMENDATION

That the Committee of Council recommend that Council approve the revised Trading Permit Guidelines as detailed in Attachment 4.1.

Trading Permit Guidelines

October 2020

ATTACHMENT 4.1



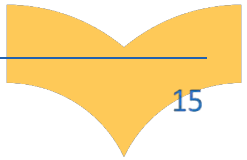


Record of Adoption

Stage	Version No	Document Date	Approval Date
Final	2	2 February 2017	27 February 2017

Schedule of Modifications

No	Description	Version No	Document Date	Approval Date
1	Section 1.1 Objectives Updated City Centre Waterfront Trading Locations Modified (As per City Centre Waterfront Precinct Concept Plans)	3	3 April 2019	28 April 2019
2	City Centre Waterfront Locations Modified <ul style="list-style-type: none">WF2 to be exclusive until 30 June 2023WF3 to be removed until 30 June 2023Remove reference to Stingray Wharf Jetty (* administrative modification only)	4	23 December 2020	27 October 2020
3	City Centre Waterfront locations modified; excluded Cruise Operators who are carrying paying customers and included definition; and referred fees to the Schedule of Fees and Charges adopted by Council annually	5	30 July 2021	



Contents

1.	Introduction	1
1.1	Objectives	1
1.2	Background	1
1.3	Application of the Guidelines	2
1.4	Exemptions	2
2.	Commercial and Aquatic Operators	3
2.1	Location	3
2.2	Amenity and Appearance	3
2.3	Siting Requirements	4
2.4	Maintenance and Cleaning	4
2.5	Public Risk Management	4
2.6	Application Process	5
2.7	Operations	6
2.8	Assessment and Selection Process	7
3.	Mobile Traders	10
3.1	Definitions	10
3.2	Location	10
3.3	Siting Requirements	11
3.4	Amenity and Appearance	11
3.5	Management	11
3.6	Maintenance and Cleaning	13
3.7	Public Risk Management	13
3.8	Application Process	13
3.9	Approval	14

4.	Fee Structure	15
5.	Delegations	15

List of Figures

Figure 1	City Centre Waterfront Trading Locations	8
Figure 2	City of Mandurah Trading Locations	9
Figure 3	Mobile Traders Approved Locations	12



1. Introduction

1.1 Objectives

The objectives of these Guidelines are to:

- (a) Encourage the use of parks and reserves by commercial and aquatic operators and mobile traders, as a means of enhancing the vibrancy and community activity that flows from this activation of our public spaces, whilst managing the competing needs and interests of pedestrians, consumers and local business proprietors;
- (b) To facilitate enjoyable, interesting, unique and convenient leisure and recreational options for residents, families and other members of the community to experience in their local area;
- (c) Encourage and provide entrepreneurial, place-making and tourism opportunities that contribute to the well-being of residents, to the overall experience of visitors to Mandurah and to the growth of small businesses;
- (d) Provide guidelines and assessment criteria for the consistent decision making of applications for trading permits applications on public land.

1.2 Background

In recent years, the general community has sought to engage with public spaces in a different manner than has traditionally been the case.

The City recognises and acknowledges the presence of activity can result in competing demands on public spaces for a variety of uses. In order to effectively manage this usage, the City has identified management arrangements to address this issue.

In particular, designated locations and exclusion zones for recreation, leisure and trading activities and a trading permit application process for mobile traders and commercial and aquatic operators.

The City aims to support activity diversity in a manner that facilitates safe and enjoyable experiences for all users, whilst ensuring that the trading activities are appropriately managed and provide a high degree of community benefit for Mandurah residents, visitors and tourists.

These guidelines are prepared and adopted pursuant to Part 10 and 12 of the *Local Government Property and Public Places Local Law 2016*.



1.3 Application of the Guidelines

The City will assess applications for Trading Permits at designated sites and throughout the City of Mandurah in accordance with this Policy.

These guidelines apply in two parts:

- (a) Part 2 applies specifically to Commercial and Aquatic Operators [who are not Cruise Operators carry paying customers](#);
- (b) Part 3 applies specifically to Mobile Traders.

1.4 Exemptions

These Guidelines do not apply to the following activities (separate approval may be required):

- (a) Buskers and raffle sales from a site approved by the City;
- (b) Swap meets/markets/fetes/fares and the like, run by an organisation which can demonstrate that its objectives are charitable, benevolent, religious, cultural, educational, recreational or sporting (no approval is required in accordance with this Policy);
- (c) Any trading associated with an event run or sponsored by the City of Mandurah;
- (d) Trading, which in the opinion of the City, is directly associated with a sporting event/competition recognised by the City;
- (e) Existing legal businesses placing stalls on the public land adjacent to their premises; ~~and~~
- (f) Personal Trainers utilising Public Open Space; [and](#)
- (g) [Cruise Operators that are required to enter into a licence agreement with the City to use the commercial jetties located on the Eastern Foreshore.](#)

[Cruise Operators are defined as carrying paying customers that requires a jetty to be used for embarking and disembarking that is operating as a commercial vessel.](#)

[Note: Contact the City of Mandurah if you are a Cruise Operator wanting to submit an expression of interest for using the commercial jetties.](#)



2. Commercial and Aquatic Operators

2.1 Location

For the purposes of this section, **Commercial and Aquatic Operators** have been divided into two areas:

- Commercial and Aquatic Approved Locations (City Centre Trading Locations);
- Commercial and Aquatic Operators Approved Locations (City of Mandurah Trading Locations);

Within the City Centre Waterfront Precinct, key locations have been identified (Refer Figure 1) where trading activity is encouraged. [The locations are either designated for Commercial and Aquatic Operators for both land and water based activities or Commercial Operators with land based activities.](#)

There are also a number of locations throughout Mandurah, outside of the City Centre Waterfront Precinct, which have been designated as suitable sites for commercial and aquatic operators (Refer Figure 2).

- Alternative locations not identified within Figures 1 and 2 may be considered subject to approval by Council.
- More than one operator may be located within any of these locations, which may include operators with similar activities.

2.2 Amenity and Appearance

Commercial and Aquatic Operators are to:

- Ensure that any advertisements, placards, flags, bunting or posters, are attached to and forming part of the vehicle or trailer. One portable sign may be permitted to be displayed subject to compliance with Part 8 of the *Local Government Property and Public Places Local Law 2016*.
- Not install permanent fixtures. Following trade, all related fixtures must be removed from the site. If storage is required, applicants are encouraged to find privately owned land and negotiate use arrangements accordingly;
- Ensure that they do not cause or make noise or a disturbance which is likely to be a nuisance or annoyance.



2.3 Siting Requirements

Commercial and Aquatic Operators are to ensure that:

- they avoid encroachment on bicycle and/or pedestrian paths and must not obstruct pedestrian flow and/or vehicular traffic;
- they do not obstruct, cover, remove, relocate or modify trees, public art, benches, bins, bus shelters or other City owned infrastructure;
- their position does not compromise public access, circulation, safety or other activities.
- they do not require external power, gas or water connections;
- operator vehicles must be parked in compliance with the parking requirements for the location.

2.4 Maintenance and Cleaning

Commercial and Aquatic Operators are to:

- Ensure that any notable damage to City infrastructure is reported prior to the commencement of use of the approved location(s). Commercial and Aquatic

Operators are responsible for any damage which occurs during the use of the site(s) in accordance with Part 14 of the *Local Government Property and Public Places Local Law 2016*. This includes, but is not limited to, damage to parking bollards, piping, trees, shrubs, fences, grass, signs, lighting etc.

- Ensure that their vehicles and trailers are kept in a safe and well-maintained condition at all times;

2.5 Public Risk Management

All Commercial and Aquatic Operators must hold valid public liability insurance to the value of \$10 million dollars which indemnifies the City against all claims, losses, actions, damages, costs (including legal costs) and expenses whatsoever arising out of or in connection with the trading on the site including personal injury (including death or disease) to the operator or any invitee or third party unless and then only to the extent that the operator proves said injury was due to the negligence of the City;

Loss of or damage to any property owned by the operator, the City or any third party, and; breach or non-compliance with any statute or regulation or local law of any public, municipal or other authority.



2.6 Application Process

In the event that there is significant interest from multiple operators for specific locations, an annual 'Expression of Interest' process will be open for Commercial and Aquatic Operator approved locations in July/August of each year.

Existing permit holders will be sent renewal packages during this period. Historical preference is given to regular operators following continued use for a period of 6 months or more and if the operator has not breached any permit conditions during this period.

Proposals will be considered collectively and annually, prior to the peak summer period. All existing sites will be inspected to assess viability and condition prior to the new allocation period.

Expressions of Interest shall:

- Be made by the closing date of the advertised period (every July/August);
- be made on the prescribed form;
- provide the proposed preferred location(s), including alternatives, that they seek approval to operate from and a detailed site plan to indicate location and extent of the area required;
- provide details of the activity they wish to conduct, the equipment required and the estimated number of participants;

- provide details of the proposed means of access to the site(s). A *completed Application for Vehicle Access form* will be required if you wish to take your vehicle onto any public open space;
- provide details of the proposed hours of operation;
- provide details of appropriate management procedures relating to the activity;
- provide details of any signage proposed;
- provide evidence of consultation with relevant government agencies such as: Department of Transport, Department of Fisheries, Department of Planning, Lands and Heritage and Department of Environment and Conservation;
- provide copies of all relevant qualifications.

Applications received outside of the July/August advertised period will be considered but will only receive approval to operate until the 30 June, at which point a renewal will be required to be submitted. A pro-rata fee will be incurred.



2.7 Operations

Once approval has been granted, the following will be required prior to the commencement of operations:

- the payment of a permit fee (Refer Section 4);
- evidence provided of insurance, including but not limited to current public liability insurance for no less than 10 million dollars in respect of any one claim.

Any new permits issued will be included within the City's Parks and Reserves Booking System.

Approved trading permits for Commercial and Aquatic Traders will be for a maximum term of period of 3 years, but will be subject to an annual review and renewal process by 30 June each year.

The City reserves the right to revoke the approval, to alter the location of the site and/or vary conditions of use in relation to any approval issued.

A permit does not represent exclusive use of the site. If the trading activity is likely to impact upon the operations of the City of Mandurah or its contractors or agents in terms of infrastructure maintenance, replacement or construction and/or conducting of City of Mandurah Events, then the permit may be cancelled or suspended during the period of that impact, as determined by the City.

If concerns are raised by local businesses or the community on the operation or location of the operator, the City may require the operator to relocate or cease trading temporarily or permanently from any chosen location.

A Trading Permit may be cancelled if the permit holder has not complied with the conditions of the permit or the provisions of any Local Law related to the activity.

Should an operator wish to withdraw their use of a site, this must be done in writing to the City of Mandurah.

Should an operator wish to change their regular location/hours of operation then written confirmation will be required 48 hours prior to the proposed change.



2.8 Assessment and Selection Process

In determining an application for a Commercial and Aquatic Operator trading permit, the City may have regard to:

- Any relevant policies of the City;
- The Competition Principles Agreement;
- The desirability of the proposed activity;
- The location of the proposed activity in accordance with Figures 1 and 2;
- The appropriateness of the type of activity in that location with respect to pedestrian and vehicular traffic and the safety of the public, their customers and the trader themselves;
- Any impact the business will have on the surrounding amenity;
- Any impact the business will have on the permanent retail and service base;
- The experience of the operator in conducting the proposed activity, including any previous breach of any condition of a previous permit or any previous breach of any provision of the relevant Local Law;
- The level of support from relevant government agencies;
- The suitability of the operators proposed health and safety measures;

- The suitability of the operators proposed environmental management strategies;
- The performance and reputation of an existing operator;
- Any other criteria as prescribed by the City of Mandurah.

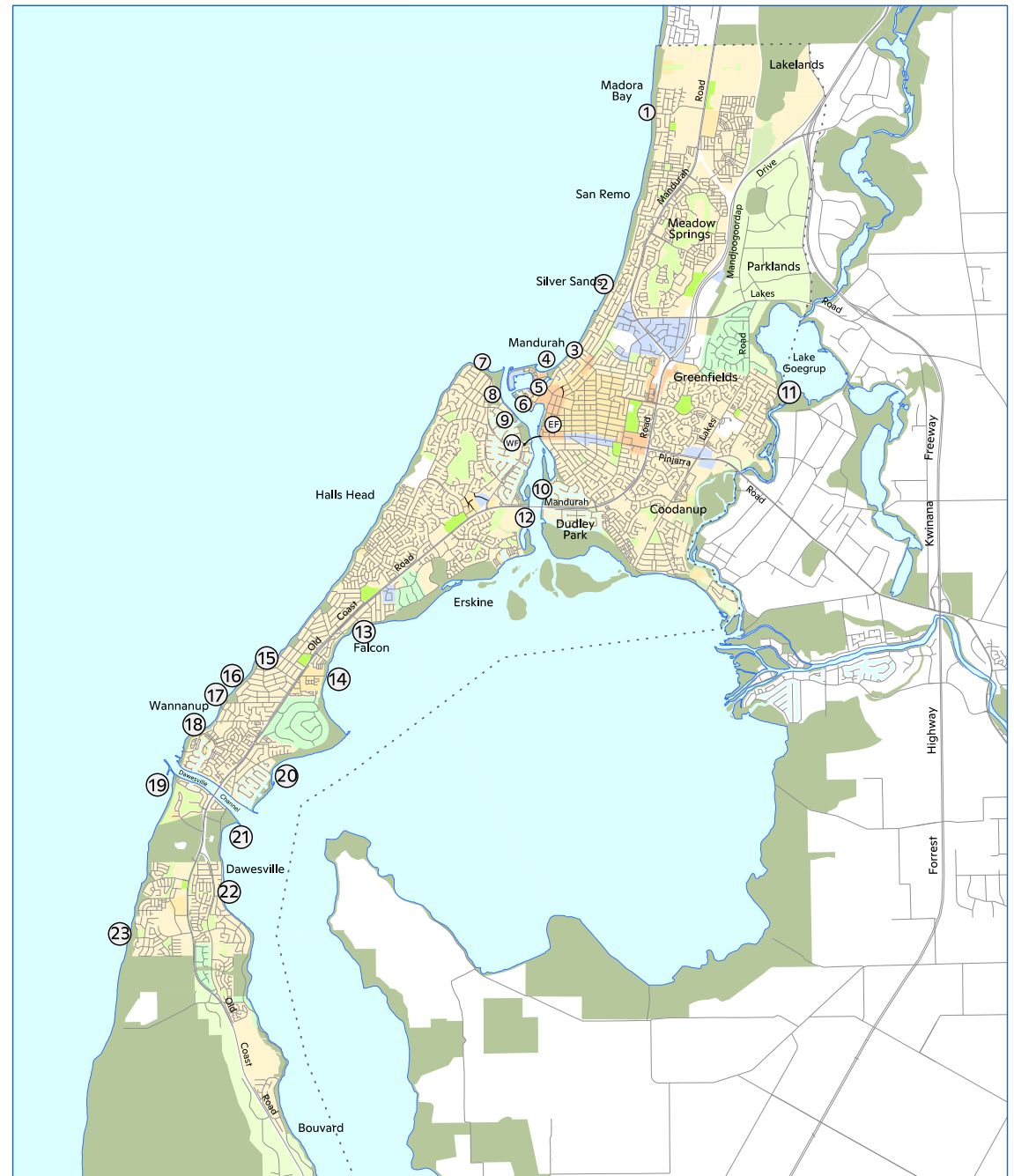
All successful applicants will be granted a Trading Permit incorporating Council's standard conditions and any that are specific to the individual site and type of operation.

Figure 2 - City of Mandurah Trading Locations

Commercial and Aquatic Operators (Approved Locations)

- ① Madara Bay Foreshore
- ② Wade Street Foreshore
- ③ Henson Street Reserve
- ④ Town Beach
- ⑤ Keith Holmes Reserve
- ⑥ Entrance Channel Foreshore
- ~~MB Mandjar Bay (See Figure 1)~~
- EF Eastern Foreshore (See Figure 1)
- WF Western Foreshore (See Figure 1)
- ⑦ Doddi's Beach
- ⑧ Mary Street Lagoon
- ⑨ Henry Sutton Grove Foreshore
- ⑩ Waterside Foreshore
- ⑪ Riverside Foreshore
- ⑫ Osprey Waters Foreshore
- ⑬ Novara Foreshore
- ⑭ Olive Road Foreshore
- ⑮ Falcon Bay
- ⑯ Avalon Beach North
- ⑰ Avalon Beach South
- ⑱ Northport Foreshore
- ⑲ Pyramids Beach
- ⑳ Estuary Place Foreshore
- ㉑ Estuary Road / Thisbe Drive Foreshore
- ㉒ Dawesville Foreshore
- ㉓ Melros Beach

--- City of Mandurah Boundary





3. Mobile Traders

3.1 Definitions

Mobile Traders are defined as a person or persons who trade temporarily from a fixed or non-fixed location or a number of locations and vacate the location(s) once trading has ended for the day. Examples include; Flower stalls, Art sales, Ice-cream van, Food van, Coffee van. The City supports food related mobile traders when vendors practice safe food handling practices in accordance with the Food Act 2008 and consider the needs of all users of the area, including the safety of consumers and pedestrians.

Mobile Traders shall not trade in any public place until a permit has been issued by the City of Mandurah in writing for that location/s.

A Trading Permit does not represent exclusive use of a site. If the trading activity is likely to impact upon the operations of the City of Mandurah or its contractors or agents in terms of infrastructure maintenance, replacement or construction and/or conducting of City of Mandurah Events, then the permit may be cancelled or suspended during the period of that impact, as determined by the City.

If concerns are raised by local businesses or the community on the operation or location of a mobile trader, the City may require the vendor to relocate or cease trading temporarily or permanently from any chosen location.

A Trading Permit may be cancelled if the permit holder has not complied with the conditions of the permit or the provisions of any Local Law related to the activity.

3.2 Location

Mobile Traders are encouraged to locate within the pre-approved locations indicated in Figure 3.

Alternative locations may be considered subject to approval by the City of Mandurah, with the exception of:

- the Eastern Foreshore;
- the Western Foreshore;
- Mandurah City Centre (area bounded by Mandurah Terrace, Pinjarra Road, Gibson Street and Sutton Street);
- Mandurah Ocean Marina;
- All road reserves which are under the control of Main Roads WA (Mandurah Road, Old Coast Road, Mandjoogoordap Drive and Pinjarra Road east of Mandurah Road);
- Major roads under the control of the City of Mandurah (which include Peel/Allnutt Street, Mandurah Terrace (south of Anstruther Road), Anstruther Road, Pinjarra Road (west of Mandurah Road), Murdoch Drive, Gordon Road and Leslie Street (Refer Figure 3).

Mobile traders must be more than 400m away from any shops which offer for sale the same, or similar commodities, except where the trader has been invited onto a property by the property owner or is participating in a community event, such as a weekend market or sporting event.

Mobile Traders must also be more than 300m away from schools during the hours of 8.00am to 9.00am and 3.00pm to 3.45pm, except during the school holidays, weekends and public holidays.



3.3 Siting Requirements

Mobile Traders must ensure that:

- they avoid encroachment on bicycle and/or pedestrian paths and must not obstruct pedestrian flow and/or vehicular traffic;
- they do not obstruct, cover, remove, relocate or modify trees, public art, benches, bins, bus shelters or other City owned infrastructure;
- their position does not compromise public access, circulation, safety or other street activities.
- they do not require external power, gas or water connections;
- a maximum of 20% of the total number of car bays servicing the reserve and trading location are utilised by vehicles/trailers/vans/equipment associated with the traders.

3.4 Amenity and Appearance

Mobile Traders must:

- Not sell alcohol or tobacco products at any time;
- Have a vehicle whose presentation contributes to the character of the area;
- Ensure that any advertisements, placards, flags, bunting or posters, are attached to and forming part of the vehicle, stall or display stand. One portable sign may be permitted to be displayed subject to compliance with Part 8 of the Local Government Property and Public Places Local Law 2016.

- Not install permanent fixtures. However, mobile traders may be permitted to provide tables and chairs for their patrons, to be located adjacent to the vehicle or stall, subject to suitable space availability. Following trade, all related fixtures must be removed from the site;
- Ensure that they do not cause or make noise or a disturbance which is likely to be a nuisance or annoyance.

3.5 Management

- Trading locations may only be used between the hours of 7am and 9pm.
- A maximum of 3 mobile traders are allowed at any one location at the same time (and subject to meeting the other criteria). Traders are permitted on a 'first come first served' basis.

Any conflicts in Trading Locations (ie, which vendor is to be at which location at which time) must be resolved by the mobile traders;

- Mobile Traders are responsible for preparing and advertising a roster system (where necessary) that determines when and at which trading location a mobile trader can operate.

Figure 3 - Mobile Traders Approved Locations

Mobile Traders Exclusion Areas

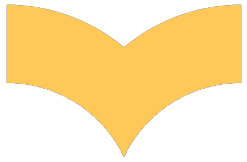
- Major Roads
- City Centre / Mandurah Ocean Marina

Mobile Traders Pre-Approved Locations

- (A) Madora Bay North
- (B) Black Swan Lake
- (C) Quarry Adventure Park
- (D) Henson Street Reserve
- (E) Silver Sands Reserve (Mandurah Tce)
- (F) Osprey Waters Foreshore
- (G) Northport Foreshore
- (H) Melros Beach

City of Mandurah Boundary





3.6 Maintenance and Cleaning

Mobile traders must:

- Ensure that any notable damage to City infrastructure is reported prior to the commencement of use of the approved trading location/s. Mobile Traders are responsible for any damage which occurs during the use of the trading location in accordance with Part 14 of the Local Government Property and Public Places Local Law 2016. This includes, but is not limited to, damage to parking bollards, piping, trees, shrubs, fences, grass, signs, lighting etc.
- Ensure that their vehicles, stalls, caravan, trailers are kept in a safe and well-maintained condition at all times; Trading locations must be regularly cleaned during all hours of operation presenting a well-cared for image;
- Mobile Traders must provide bins for use and ensure that the area around their position is kept clear of rubbish and refuse at all times.

3.7 Public Risk Management

All mobile traders must hold valid public liability insurance to the value of \$10 million dollars which indemnifies the City.

Safety measures may be required in certain trading locations and will be assessed on a case-by-case basis by the City. If public safety cannot be reasonably addressed, permits will not be issued.

3.8 Application Process

An application can be made on the relevant application form to the City of Mandurah, including the required application fee (Refer Section 4). The following details/information are required to be completed/provided:

- Applicant Details;
- Details of Assistants;
- Proposed Location(s) of Trade including site plan(s);
- Proposed means of vehicular access;
- Days and Hours of Trade;
- Details of Goods and Services to be Traded;
- Details of any Structures, Stall or Vehicles(s) to be used (photographs to be submitted where possible);
- Vehicle and Trailer Licence Plate details;
- Copy of public liability insurance to the value of \$10 million;
- Any other additional information to support the proposal.

On submission of the completed application form and required application fee, the application will be allocated for assessment and will seek comments from departments within the City regarding proposed conditions that may be applied to an approval.



3.9 Approval

- Once approval has been granted, a permit fee will be required to be paid (Refer Section 4) prior to the commencement of operations.
- Food related mobile traders must ensure that they hold a current Food Act 2008 Certificate of Registration to ensure safe food handling practices.
- Any new permits issued will be included within the City's Parks and Reserves Booking System.
- Approval is valid for up to 12 months, dependant on the length of approval sought and fee paid. The valid permit is required to be displayed and/or produced upon request.
- A Trading Permit may be transferred to a new owner upon application (submitted on the relevant form with payment of the applicable fee).
- Notwithstanding the locational provisions within Section 3.2, Mobile Traders are permitted to operate on commercially zoned, privately owned land with the consent of the landowner.
- Where a mobile trader intends to utilise a residential property for the storage of any commercial vehicles (when not in use), approval may be required in accordance with the Local Planning Scheme.



4. Fee Structure

Permit Type	Fee
All Operators – Application Fee/Expression of Interest Fee	\$100 Refer to the current City of Mandurah Schedule of Fees and Charges
Commercial and Aquatic Operators	\$800 annually \$550 Summer Period (1 October – 30 April) \$100 monthly Refer to the current City of Mandurah Schedule of Fees and Charges Note: Summer Period is 1 October to 30 April
Mobile Traders	\$2500 annually \$500 per month \$1500 Summer Period \$200 per week \$650 quarterly — \$50 per day Refer to the current City of Mandurah Schedule of Fees and Charges
Ice-cream and Confectionary Traders (Capped)	\$800 annually \$160 per month Refer to the current City of Mandurah Schedule of Fees and Charges
Transfer of Permit	\$50 Refer to the current City of Mandurah Schedule of Fees and Charges

5. Delegations Approval

Permit Type	Delegation Approval
All Commercial and Aquatic Operators that fully comply with the requirements of these Guidelines	Determined by Officers
All Commercial and Aquatic Operators seeking Approval Period for longer than 3-year term	Determined by Council
Proposals that may be appropriate but are inconsistent with these Guidelines for Commercial and Aquatic Operators (City Centre Waterfront Precinct)	Determined by Council
Proposals that may be appropriate but are inconsistent are inconsistent with these guidelines for Commercial and Aquatic Operators (Outside City Centre locations)	Determined by Officers
All Mobile Traders	Determined by Officers

Figure 1 - City Centre Waterfront Trading Locations EXISTING

Commercial and Aquatic Operators (Approved Locations)

- ⑤ Keith Holmes Reserve
- ⑥ Stingray Wharf / Entrance Channel Foreshore

Mandjar Bay

- MB1 MPAC Jetty
- MB2 'TODs / Cicerello's' Jetty

Eastern Foreshore

- EF1 North (Adjacent to Car Park Station No 8)
- EF2 South
- EF3 'Future Place Pod' (Subject to EOI Process under Section 2.6)
- EF4 Eastern Foreshore Jetties

Western Foreshore

- WF1 Adjacent War Memorial Car Park
- WF2 Adjacent to Pontoons
(Exclusive to Kayaks 4 U until 30 June 2023)
- WF3 South of Pontoons
(Not Available until 30 June 2023)
- WF4 'Future Pop-Up Commercial Opportunity'
(Subject to EOI Process Under Section 2.6)
- WF5 Bridge Car Park South

└ ┘ Exclusion Area

Exclusion Areas also extend to existing exclusive lease and non-exclusive licenced areas that are outside the scope of the approved locations



5	SUBJECT:	Beach Patrol Service: Overview Season Two 2021
	DIRECTOR:	Place and Community
	MEETING:	Committee of Council
	MEETING DATE:	10 August 2021

Summary

At its meeting on 17 December 2019, Council resolved to accept the tender submission from Surf Life Saving Western Australia Incorporated for the provision of Beach Patrol Services with additional options for jet-ski/inflatable rescue boat (IRB) and complementary beach patrols services as required. The provision of the required services was for a trial period of three years.

As part of the report, officers committed to report an overview of Surf Life Saving Western Australia's performance against the key performance criteria upon completion of each year of the contract. Season Two was completed at the conclusion of the Easter 2021 period and Surf Life Saving Western Australia have provided statistical information to the City for each of the patrol locations.

Council is requested to note the results of the second season of the City's Beach Patrol Service and acknowledge that the patrol schedule for the 2021/22 season will commence December 2021 with a communication plan to be delivered informing the community and visitors of the service.

Disclosure of Interest

Nil

Location

Pyramids Beach Dawesville, Falcon Bay Falcon, Town Beach Mandurah and San Remo Beach Madora Bay.

Previous Relevant Documentation

- G.38/07/20 28 July 2020 Council noted the results of the first season of the City's Beach Patrol Service and acknowledge that the patrol schedule for the 2020/21 season will commence on 21 December 2020.
- G.38/12/19 December 2019 Council endorsed to accept Surf Lifesaving Western Australia Incorporated as the preferred tenderer for Tender 19-2019 for the Beach Patrol Services for a period of three years at the lump sum price of \$558,329.42 and the schedule of rates tendered for the additional services.
- SP.4/11/19 November 2019 Council declined all tenders for Tender T15-2019 Lifeguard Services and authorised the advertising of a tender for the provision of a beach patrol service for three years 2019/20, 2020/21 and 2021/22 at Pyramids, Falcon Bay, Town and San Remo/Madora beaches, acknowledging that year 1 (2019/20) will be a part-service building to a full service by 2020/21.
- G.10/8/19 August 2019 Council authorised the advertising of a tender for the provision of a beach patrol service for the years 2019/20 to 2021/22 at Pyramids, Falcon Bay, Town and San Remo/Madora beaches.

- G.34/3/19 March 2019 Council endorsed the City to write to the Minister for Fisheries requesting consideration for the grant funding to be reallocated for the purpose of supporting a beach patrol service.
- G.27/12/17 December 2017 Council endorsed the consultation plan for the proposed Falcon Bay Shark Barrier.
- G.13/8/17 August 2017 Council considered an interim report on the possible implementation of a Shark Barrier in Falcon Bay.

Background

In May 2019, the City sent correspondence to the Minister for Water; Fisheries; Forestry; Innovation and ICT; Science seeking approval to re-allocate a \$287,000 grant for the proposed installation of a beach enclosure at Falcon Bay, to support a beach patrol service at four beaches within the City of Mandurah.

On 13 June 2019, the City of Mandurah was notified that its request to re-allocate the funds for the purposes of establishing a beach patrol service had been approved. The original grant of \$287,000 would instead be made available for use as a one-off contribution to the City of Mandurah to support beach patrols at Pyramids Beach, Falcon Bay, Town Beach and San Remo/Madora Beach for a trial period of three years.

In August 2019, Council authorised the advertising of a tender for the provision of a paid lifeguard service for the years 2019/20 to 2021/22 at Pyramids, Falcon Bay, Town and San Remo/Madora Bay beaches. In December 2019, Council resolved to accept Surf Life Saving Western Australia Incorporated as the preferred tenderer for Tender 19-2019 for the provision of a Beach Patrol Service for a trial period of three years. Upon appointment of Surf Life Saving Western Australia, the City signed a grant agreement with the Department Primary Industries and Regional Development for the State Government's contribution of \$287,000 towards the beach patrol service trial.

Season One of the Beach Patrol Service commenced on 20 January 2020 and was completed at the conclusion of the Easter 2020 period.

Comment

Season Two of the Beach Patrol Service commenced on 21 December 2020 and was completed at the conclusion of the Easter 2021 period, at the below locations:

- Pyramids Beach Dawesville
- Falcon Bay Falcon
- Town Beach Mandurah
- San Remo Beach Madora Bay.

The service operated Monday to Saturday for the period 20 – 31 January 2021 and then Saturdays only from 1 February to 31 March 2021. In addition, the service operated over the Easter period from Good Friday to Easter Monday inclusive.

The specification in the operating agreement between the City and Surf Lifesaving Western Australia, included the following reporting requirements:

- Beach Statistics including attendance numbers and general beach activities
- Total number of paid patrol hours
- Total number of shark sightings in proximity to patrolled locations
- Total number of beach closures, shark related and other incidents
- Total number of rescues performed
- Total number of first aid assistances provided
- Total number of engagements with local volunteer patrol services
- Total number of local people (Mandurah/Peel; Region) employed

Additionally, the Department Primary Industries and Regional Development grant agreement had the following reporting Key Performance Indicators:

Operational days, availability, hours patrolled and outcomes

- Number of sharks sighted
- Number of beach closures
- Number of rescues
- Number of marine search and rescue requests
- Number of additional shark related requests

The following statistics are a combination of the operational reports provided by Surf Lifesaving Western Australia, for all four beach locations: (refer Attachment 5.1)

- 777.5 Service Delivery hours
- Zero Beach closures as a result of shark sightings
- Eleven Rescues
- 222 Beach Users per day
 - *Attendance numbers include beach users in the water, out of the water and using water-based craft.*
- 721 Preventative Actions including:
 - *Erecting warning signage*
 - *Advising swimmers already in the water of hazards/risk*
 - *Advising beach users of hazards / risks prior to them entering the water*
 - *Advising water-based craft users (i.e. surfers) of hazard / risks or requirements (such as not to surf between the flags) when already in or prior to entering the water*
- 79 Minor First Aid incident
- 1 Major First Aid incident
 - *Swimmer dove into the water and hit head in shallow water. Life guards responded and stabilised the patient until Ambulance arrived. Patient was airlifted.*
- 13 Public Relation Activities per day
 - *These include the social type of interaction with beach users as opposed to a preventative action which is more of a directive or instruction. Public relations may be positive (talking about the service, educating about beach safety, etc.) or negative (receiving a complaint about the service or another beach user, etc.).*
- 71 x incidents speaking to dog owners
- 244 x incidents speaking to users regarding littering
- 79 x Surf Craft interactions
 - *These occurred mostly at Pyramids Beach and Falcon Bay and typically relate to surfers surfing between the flags.*

Only one Jet Ski Patrol was utilised during the season and proved effective, however the patrol scheduled from Pyramids Beach was cancelled due to a clash in service with the Surf Lifesaving Club and due to the COVID-19 outbreak.

Beach users at all four locations consistently provided positive feedback to Lifeguards about their presence and conduct. Engagement with both the Mandurah and Port Bouvard Surf Life Saving Clubs was positive with alignment of patrol days and times established.

In year two, eight local residents were employed to fill Lifeguard positions delivering services across all locations, these residents and active members of Mandurah Surf Lifesaving Club and Port Bouvard Surf Lifesaving Club. The remaining four Lifeguards were engaged from the City of Rockingham.

Additional service options utilised during the season were initiated over the Christmas period where extra beach patrols were delivered at Town Beach, Pyramids Beach and Falcon Bay. Furthermore, the final four patrols were cancelled at San Remo Beach due to low beach numbers and resources diverted to Town Beach in order to enable longer patrols to understand the beach attendance post 12.30pm at one of the most popular beaches.

SLSWA have recommended reviewing the service profile at San Remo, for 2021/22 and diverting the patrol hours to align with beach attendance trends at Falcon Bay and Town Beach. Officers have discussed changing the service provision and impacts to the funding agreement with Department of Primary Industries & Regional Development who are supportive of reducing the patrols to three locations.

Season Three 2021/22 Patrol Schedule

The below patrol schedule is proposed for Season Three 2021/22;

Service Location	Start Date	End Date	Operational times	Days	Number of Lifeguards
Falcon Bay	20 Dec	29 Jan	8.00am– 2.30pm	Monday to Saturdays (excluding public holidays)	2
	5 Feb	26 Mar	8.00am– 2.30pm	Saturdays only	2
	2 Apr	9 Apr	8.00am– 2.30pm	Saturday only	2
	15 Apr	18 April	8.00am– 2.30pm	Easter Friday to Easter Monday	2
Pyramids Beach	20 Dec	29 Jan	8.00am– 12.30pm	Monday to Saturdays (excluding public holidays)	2
	5 Feb	26 Mar	8.00am– 12.30pm	Saturdays only	2
	2 Apr	9 Apr	8.00am– 12.30pm	Saturday only	2
	15 Apr	18 April	8.00am– 12.30pm	Easter Friday to Easter Monday	2
Town Beach	20 Dec	29 Jan	8.00am– 2.30pm	Monday to Saturdays (excluding public holidays)	2
	5 Feb	26 Mar	8.00am– 2.30pm	Saturdays only	2
	2 Apr	9 Apr	8.00am– 2.30pm	Saturday only	2
	16 Apr	16 Apr	8.00am– 2.30pm	Easter Saturday only	2

Season Three 2021/22 – Communications Schedule

The below communications schedule is proposed for Season Three 2021/22;

Date	Information	Medium
1 – 20 December 2021	Locations of patrols commencing 20 December 2021, Monday to Saturday until end of January 2022.	Social Media, Newspaper, Media Release, Volunteer Clubs networks.
15 – 31 January 2022	Locations of patrols reducing to Saturday s only from 5 February to 26 March 2022	Social Media, Newspaper, Media Release, Volunteer Clubs networks.
1 April – 18 April 2022	Locations for Easter Patrol Schedule - Good Friday to Easter Monday 2021.	Social Media, Newspaper, Media Release, Volunteer Clubs networks.

It should also be noted that City officers will conduct an annual review of the service and provide a report back to Council for consideration at the end of year three.

Statutory Environment

Nil.

Policy Implications

Nil.

Financial Implications

Season Two Financial Statements:

Sources of Income	BUDGET	ACTUALS
Department of Primary Industries & Regional Development	\$95,666.66	\$95,666.66
City of Mandurah	\$124,333.34	\$114,333.34
TOTAL INCOME		\$209,824.81

Expenditure Purpose	BUDGET	ACTUALS
Surf Lifesaving WA Invoice# 40382 Beach Patrol at various locations	\$220,000	\$156,645.33
Surf Lifesaving WA Invoice # 49633 Beach Patrol at various locations		\$53,179.48
TOTAL EXPENDITURE		\$209,824.81

In the 2021/22 operating budget, an allocation of \$220,000 has been listed for the delivery of the City's Beach Patrol Service.

Risk Analysis

The Beach Patrol Service aims to assist beach users to make informed decisions about their water use and provide assistance, generally, to members of the public. The community who access Mandurah's beaches continue to have a responsibility to make informed decisions about safe beach access. The service cannot, nor does it aim to, address all risks associated with beach use.

Strategic Implications

The following strategies from the *City of Mandurah Strategic Community Plan 2020 – 2040* are relevant to this report:

Social:

- Provide a range of social, recreational and cultural experiences for our residents and visitors to enjoy and take pride in.
- Advocate for and facilitate the provision of diverse and environmentally sustainable places and spaces for people to enjoy an inclusive and active lifestyle.

Health:

- Promote the importance of a healthy, active lifestyle and the role the natural environment plays in preventative health, within our community.

Organisational Excellence:

- Ensure the City has the capacity and capability to deliver quality services and facilities through accountable and transparent business practices, governance, risk and financial management.
- Ensure that our actions maintain a sustainable balance between economic growth, the environment and social values.

Conclusion

The Beach Patrol Service successfully implemented by the City and supplied by Surf Lifesaving Western Australia for Season 1 2020, was positively received by the community. Surf Lifesaving Western Australia indicated in their operational reporting that beach users at all four locations consistently provided positive feedback to Lifeguards about their presence and conduct. Surf Lifesaving Western Australia provided detailed operational reports for each location and a combined service report, that detailed performance

against the Key Performance Indicators for the City and the Department Primary Industries and Regional Development grant agreement.

Season Three 2021/22 is scheduled to commence on December 2021, providing a full summer season of Beach Patrols at three locations, through to the completion of the Easter 2022 period. A detailed communications plan will be implemented from 1 December 2021, to ensure the community and visitors are fully informed of the schedule for Season Two 2020/21.

It is noted that the report from Surf Lifesaving WA includes some recommendations and officers will communicate with representatives to address these.

A further report will be presented to Council at the conclusion of the three year pilot to determine how to progress.

NOTE:

- Refer ***Attachment 5.1 Annual Lifeguard Activity Report – All Locations***

RECOMMENDATION

That the Committee of Council recommend that Council:

- 1. Notes the results from the second season of the City of Mandurah Beach Patrol Service;**
- 2. Acknowledges the patrol schedule for the 2021/22 season commencing 20 December 2021 and the proposed communications plan to inform the community and visitors of the service.**

ALL LOCATIONS

City of Mandurah
2020 / 2021 Season

SURF LIFE SAVING
WESTERN AUSTRALIA

**SERVICE DELIVERY STATISTICS**

169
PATROLS



777.5
PATROL HOURS



222
ATTENDANCE
DAILY AVERAGE



0 / 0
SHARK / CROCODILE
SIGHTINGS



721
PREVENTATIVE ACTIONS



79
MINOR FIRST AIDS



1
MAJOR FIRST AIDS



11
RESCUES

LOCAL GOVERNMENT ORDINANCE

0
MOTOR VEHICLES / BIKES



20
PWC / BOATS



79
SURF CRAFT



71
DOG / ANIMAL OWNERS



244
LITTERING



68
HAZARDS / GLASS



0
INAPPROPRIATE
BEHAVIOUR



13
PUBLIC RELATIONS
DAILY AVERAGE

COMMENTS

SLSWA successfully delivered the second term (2020 / 2021 season) of the three-year Beach Patrol Services contract between the City of Mandurah and SLSWA. During the season, all four locations were patrolled to supplement the patrols delivered by the Mandurah Surf Life Saving Club or Port Bouvard Surf Life Saving Club. Additional beach patrols were delivered to offset certain patrols that could not be completed by either Club as well as one jet ski patrol between San Remo and Halls Head.

The final four patrols at San Remo were cancelled in consultation with the City of Mandurah due to low beach attendance. These resources were diverted to enable longer patrols at Town Beach on these same days to understand what beach attendance post-12.30pm might be like at one of the most popular beaches within the City of Mandurah. SLSWA recommends the City of Mandurah consider reviewing the service profile at Town Beach and San Remo for the 2021 / 2022 season. Similar consideration for Falcon Bay is also recommended.

A total of twelve Lifeguards were engaged to deliver patrol requirements during the 2020 / 2021 season under either seasonal (i.e. fixed term) or casual employment arrangements. Eight Lifeguards were City of Mandurah residents and active Mandurah Surf Life Saving Club or Port Bouvard Surf Life Saving Club members. The remaining four Lifeguards were engaged from the City of Rockingham area.

SERVICE DELIVERY STATISTICS



40
PATROL DAYS



180
PATROL HOURS



67
ATTENDANCE
DAILY AVERAGE



0 / 0
SHARK / CROCODILE
SIGHTINGS



107
PREVENTATIVE ACTIONS



1
MINOR FIRST AIDS



0
MAJOR FIRST AIDS



0
RESCUES

LOCAL GOVERNMENT ORDINANCE



0
MOTOR VEHICLES / BIKES



0
PWC / BOATS



0
SURF CRAFT



0
DOG / ANIMAL OWNERS



0
LITTERING



0
HAZARDS / GLASS



0
INAPPROPRIATE
BEHAVIOUR



10
PUBLIC RELATIONS
DAILY AVERAGE

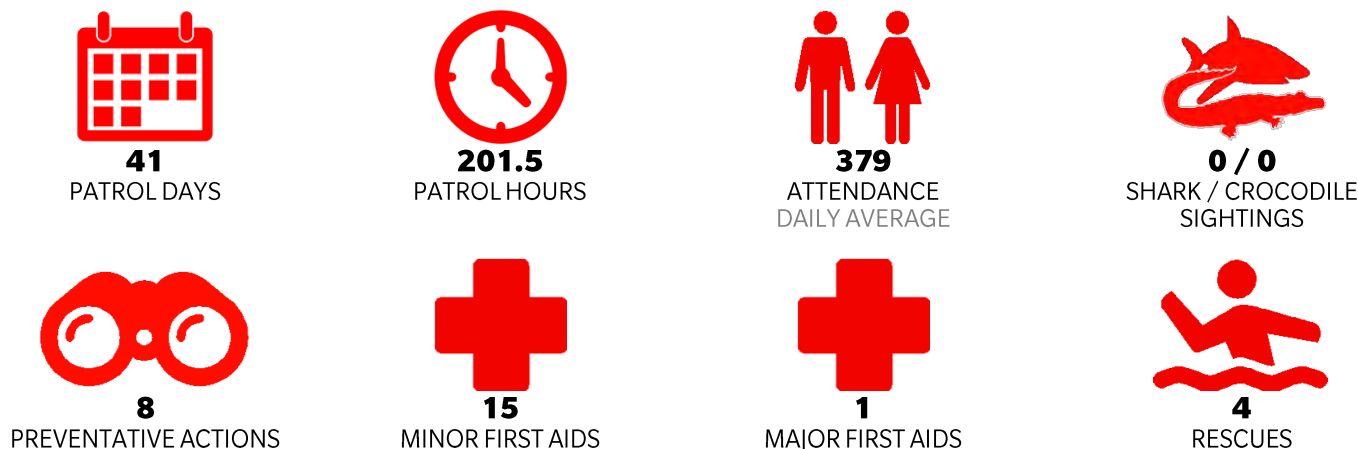
COMMENTS

Based on beach attendance statistics captured throughout the 2020 / 2021 season, San Remo Beach is considered as the least frequented location. 60% of beach users at San Remo Beach throughout the reporting period were on beach; overshadowing 34% who were swimming and 6% using craft. On average, 5 people swam at San Remo Beach per hour.

On 13 March, 20 March, 27 March and 3 April, SLSWA did not complete beach patrols at San Remo Beach. This was done in consultation with the City of Mandurah and enabled resources to be diverted to Town Beach in order to validate opportunities to alter the service profile at that location in the future. Moving forward, SLSWA recommends the City of Mandurah review the service profile at San Remo Beach to align with beach attendance trends including consideration for a surveillance or roving patrol.

Irrespective of any changes to the service profile at San Remo Beach, SLSWA recommends the continued consideration of additional jet ski patrols being deployed from San Remo Beach in future seasons. Based on the one jet ski patrol delivered during the 2020 / 2021 season, the impact and effectiveness achieved during this patrol between San Remo and Halls Head was high.

SERVICE DELIVERY STATISTICS



LOCAL GOVERNMENT ORDINANCE



COMMENTS

Based on beach attendance statistics captured throughout the 2020 / 2021 season, Town Beach is considered as one of the most popular locations based on its accessibility and amenities. 54% of beach users at Town Beach in 2020 / 2021 were on beach; overshadowing 36% who were swimming and 10% using craft. On average, 26 people swam at Town Beach per hour.

On 13 March, 20 March, 27 March and 3 April, SLSWA completed extended beach patrols between 8.30am and 4.45pm. This was done following consultation with the City of Mandurah to validate opportunities and methodologies to alter service profiles for future seasons at the location that better match beach attendance trends. Throughout the peak of the season (i.e. summer school holiday period) Town Beach Lifeguards close the patrol at 12.30pm with at least 90 people recreating at the location. This is near peak attendance on any given day. Feedback from the Mandurah Surf Life Saving Club who also patrol the location indicates that Town Beach is generally busiest in early to mid-afternoon during this period. Moving forward, SLSWA recommends the City of Mandurah review the service profile at Town Beach to align with beach attendance trends.

SLSWA would also like to begin discussions with the City of Mandurah regarding more sustainable and fit for purpose storage option at Town Beach for key lifesaving gear and equipment.

SERVICE DELIVERY STATISTICS



44
PATROL DAYS



198
PATROL HOURS



274
ATTENDANCE
DAILY AVERAGE



0 / 0
SHARK / CROCODILE
SIGHTINGS



228
PREVENTATIVE ACTIONS



47
MINOR FIRST AIDS



0
MAJOR FIRST AIDS



7
RESCUES

LOCAL GOVERNMENT ORDINANCE



0
MOTOR VEHICLES / BIKES



4
PWC / BOATS



32
SURF CRAFT



6
DOG / ANIMAL OWNERS



222
LITTERING



55
HAZARDS / GLASS



0
INAPPROPRIATE
BEHAVIOUR



10
PUBLIC RELATIONS
DAILY AVERAGE

COMMENTS

Based on beach attendance statistics captured throughout the 2020 / 2021 season, Falcon Bay is considered as a popular location based on its accessibility and amenities. 60% of beach users at Falcon Bay in 2020 / 2021 were on beach; overshadowing 32% who were swimming and 8% using craft. On average, 17 people were swimming at Falcon Bay per hour.

Peak beach attendance (of at least 80 people per hour) is generally seen from 10am onwards as typical beach users (larger groups, families, etc) begin to arrive and "setup" at the location for lunchtime and into the early afternoon. This demographic are generally less capable swimmers (attracted by the seemingly benign nature of Falcon Bay) but are also the reason for the high level of littering and hazards / glass issues at the location. Based on this, Falcon Bay Lifeguards close the patrol at 12.30pm with the location at peak attendance levels. Moving forward, SLSWA recommends the City of Mandurah review the service profile at Falcon Bay to align with beach attendance trends.



SERVICE DELIVERY STATISTICS



44
PATROL DAYS



198
PATROL HOURS



163
ATTENDANCE
DAILY AVERAGE



0 / 0
SHARK / CROCODILE
SIGHTINGS



378
PREVENTATIVE ACTIONS



16
MINOR FIRST AIDS



0
MAJOR FIRST AIDS



0
RESCUES

LOCAL GOVERNMENT ORDINANCE



0
MOTOR VEHICLES / BIKES



2
PWC / BOATS



38
SURF CRAFT



15
DOG / ANIMAL OWNERS



22
LITTERING



4
HAZARDS / GLASS



0
INAPPROPRIATE
BEHAVIOUR



7
PUBLIC RELATIONS
DAILY AVERAGE

COMMENTS

Based on beach attendance statistics captured throughout the 2020 / 2021 season, Pyramids Beach is considered as popular location for swimming and surfing. 50% of beach users at Pyramids Beach throughout the reporting period were on beach; overshadowing 24% who were swimming and 26% using craft. On average, 8 people swam and 8 people used craft at Pyramids Beach per hour.

SLSWA was not able to complete an additional jet ski patrol from Pyramids Beach this season due to a conflict with a Port Bouvard Surf Life Saving Club event occurring on the same day. This jet ski patrol was cancelled in consultation with the City of Mandurah. However, based on the impact and effectiveness achieved with the jet ski patrol deployed from San Remo during the season, this type of patrol should be considered for inclusion in future seasons.

No changes to beach patrols are recommended for Pyramids Beach for the 2021 / 2022 season.