

ITEM NO.	C.13/0122	FILE REF.	A34225
SUBJECT	New Policy – Extension of Facility Memberships in Event of Access Being Prohibited by Government Mandate		
PROPONENT	Council		
OFFICER	Chief Executive Officer		
DATE OF REPORT	25 January 2022		

Attachment 9 – Draft Policy ‘Extension of Facility Memberships in Event of Access Being Prohibited by Government Mandate’

Reason for Urgent Business: At the Concept Forum held on 13 January 2022 councillors indicated a draft policy should be prepared to address the extension of membership periods in circumstances where a member of a Shire facility (i.e. gym) is prohibited from using the facility due to a Government mandate. With a State Government directive being issued on gym users require proof of COVID vaccination Council should have a policy in place prior to the enforcement of that directive commencing on 1 February 2022.

OFFICER RECOMMENDATION 1

That Item C.13/0122 be accepted as urgent business.

OFFICER RECOMMENDATION 2

That Council:

1. *Adopt the Policy F.25 – ‘Extension of Facility Memberships in Event of Access Being Prohibited by Government Mandate’ as shown in Attachment 9.*
2. *Approve a new delegation to the Chief Executive Officer (F.10 – Extension of Facility Membership Periods) authorising the CEO to approve extension of facility membership periods in accordance with Policy F.25 – ‘Extension of Facility Memberships in Event of Access Being Prohibited by Government Mandate’*

Summary/Purpose

A draft policy has been prepared addressing circumstances where memberships of Shire facilities (i.e. gym, pool) can be extended in circumstances where a member of a Shire facility (i.e. gym) is prohibited from using the facility due to a Government mandate.

Background

At the Concept Forum held on 13 January 2022 the CEO provided a briefing to councillors on the organisation’s responses to current COVID State Government Directions, including various requirements for staff and patrons to be vaccinated. The issue of gym memberships for patrons that won’t meet the vaccination requirements was discussed and the feedback from councillors was that a draft policy should be prepared on the subject of whether refund of Bridgetown Leisure Centre memberships will be offered for members who are unvaccinated.

A draft policy has been prepared and it has been expanded to address more than just circumstances where facility members are unvaccinated. The policy addressed

any circumstance where a member of a Shire facility is prohibited from using the facility due to a Government Mandate.

Rather than proposing the refund of unused membership fees the draft policy proposes to provide affected members an extension of their membership period the by the period of the Government Mandate, up to a maximum period of 12 months. If the Government Mandate is in place for a period of more than 12 months Council will review the matter going forward and could elect to continue the membership period extension, refund unused membership fees or reinstate membership charges. The reason for proposing membership extensions rather than refunds is due to budget implications of refunding membership fees when the costs of providing the facility are unlikely to change.

The draft policy also has a section authorising the CEO to assess the status of each member on a case by case basis in the event of a Shire facility being closed to either all members or specific members and implement the extension period where it is clear that the member is a genuine user of the facility and is solely prohibited from using the facility by a Government Mandate.

Officer Comment

Linked to the proposed adoption of the policy is a recommendation that the CEO be granted delegated authority to implement the policy.

Statutory Environment

Local Government Act 1995 – Sections 5.42 – 5.48

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43. * Absolute majority required.
- (2) A Delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of Delegation.

5.43. Limits on Delegations to CEO's

A local government cannot delegate to a CEO any of the following powers or duties —

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;

- (f) borrowing money on behalf of the local government;
- (g) hearing or determining an objection of a kind referred to in section 9.5;
- (h) any power or duty that requires the approval of the Minister or the Governor; or
- (i) such other powers or duties as may be prescribed.

5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of Delegation.
- (2) A Delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of Delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
 - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and
 - (b) the exercise of that power or the discharge of that duty by the CEO's delegate, are subject to any conditions imposed by the local government on its Delegation to the CEO.
- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a Delegation under this section.
- (5) In subsections (3) and (4) —
"conditions" includes qualifications, limitations or exceptions.

5.45. Other matters relevant to Delegations under this Division

- (1) Without limiting the application of sections 58 and 59 of the Interpretation Act 1984 —
 - (a) a Delegation made under this Division has effect for the period of time specified in the Delegation or where no period has been specified, indefinitely; and
 - (b) any decision to amend or revoke a Delegation by a local government under this Division is to be by an absolute majority.
- (2) Nothing in this Division is to be read as preventing —
 - (a) a local government from performing any of its functions by acting through a person other than the CEO; or
 - (b) a CEO from performing any of his or her functions by acting through another person.

5.46. Register of, and records relevant to, Delegations to CEO's and employees

- (1) The CEO is to keep a register of the Delegations made under this Division to the CEO and to employees.

- (2) At least once every financial year, Delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

Integrated Planning

- Strategic Community Plan
Outcome 14 – Effective governance and financial management
Objective 14.1 – Achieve excellence in organisational performance and service delivery
- Corporate Business Plan - Nil
- Long Term Financial Plan – Not applicable
- Asset Management Plans – Not applicable
- Workforce Plan – Not applicable
- Other Integrated Planning – Nil

Policy Implications – Nil

Budget Implications

Depending upon the length of any Government Mandate period implementation of the proposed policy could impact future budgets as extensions could reduce membership renewals.

Whole of Life Accounting - Nil

Risk Management

Risk rating is deemed to be moderate with potential impact on Council's reputational risk if the officer recommendation is endorsed. Providing membership extensions when members are precluded from using the facility would generally be supported by the broader community noting that some individuals may be critical of the extensions where the prohibition in using the facility is due to a personal choice.

Voting Requirements – Absolute Majority for delegation

POLICY NO.	F.25
POLICY SUBJECT	Extension of Facility Memberships in Event of Access Being Prohibited by Government Mandate
ADOPTION DATE	27 January 2022

Where a member of a Shire facility (i.e. gym, pool) is prohibited from using the facility due to a Government Mandate (i.e. compulsory vaccination requirements or public health directives) the membership of each member is to be extended by the period of the Government Mandate, up to a maximum period of 12 months.

If the Government Mandate is in place for a period of more than 12 months Council will review the matter going forward and could elect to continue the membership period extension, refund unused membership fees or reinstate membership charges.

Extensions of membership periods or refunds of membership fees aren't given when members relocate out of the district or simply decide they no longer wish to be a member. The Chief Executive Officer is authorised to assess the status of each member on a case by case basis in the event of a Shire facility being closed to either all members or specific members and implement the extension period where it is clear that the member is a genuine user of the facility and is solely prohibited from using the facility by a Government Mandate.