



Policy and Legislation Committee Agenda

22 January 2019

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city@busselton.wa.gov.au

CITY OF BUSSELTON

MEETING NOTICE AND AGENDA – 22 JANUARY 2019

TO: THE MAYOR AND COUNCILLORS

NOTICE is given that a meeting of the Policy and Legislation Committee will be held in the the Committee Room, Administration Building, Southern Drive, Busselton on Tuesday, 22 January 2019, commencing at 2.00pm.

The attendance of Committee Members is respectfully requested.

DISCLAIMER

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MIKE ARCHER

CHIEF EXECUTIVE OFFICER

17 January 2019

CITY OF BUSSELTON

AGENDA FOR THE POLICY AND LEGISLATION COMMITTEE MEETING TO BE HELD ON 22 JANUARY 2019

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1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

2. ATTENDANCE

Apologies

3. PUBLIC QUESTION TIME

4. DISCLOSURE OF INTERESTS

5. CONFIRMATION AND RECEIPT OF MINUTES

5.1 Minutes of the Policy and Legislation Committee Meeting held 27 November 2018

RECOMMENDATION

That the Minutes of the Policy and Legislation Committee Meeting held 27 November 2018 be confirmed as a true and correct record.

6. REPORTS

6.1 REVIEW OF COUNCIL POLICY 181 - CROSSOVERS AND COUNCIL POLICY 195 - REINSTATEMENT OF WORKS IN ROAD RESERVES

SUBJECT INDEX:	Council Policy
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Development Control
ACTIVITY UNIT:	Development Control
REPORTING OFFICER:	Development Control Coordinator - Ronald Wildschut Land and Infrastructure Officer - Andrew Scott
AUTHORISING OFFICER:	Director, Engineering and Works Services - Oliver Darby
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Current policy - Crossovers ↓ Attachment B Proposed Policy - Crossovers ↓ Attachment C Current Policy - Reinstatement of Works in Road Reserves ↓ Attachment D Proposed Policy - Reinstatement Works in Road Reserves ↓

PRÉCIS

This report presents an updated version of two current Council Policies – Policy 181 ‘Crossovers’ (Attachment A) and Policy 195 ‘Reinstatement of works in road reserves’ (Attachment C). The proposed revised policies (Attachment B and D respectively) (the Policies) are considered to be of continuing relevance, have been moved into the new policy format and are recommended for Council approval.

BACKGROUND

Prompted by a requirement to periodically review Council policies and an initiative to make policy documents consistent with a new policy framework and format, the Policies, which relates to development control activities, have been reviewed by officers and, being considered of continuing relevance, are presented for the Council’s consideration.

In August 2017 the CEO commissioned a high level independent review of the City’s governance systems – the Governance Systems Review (GSR). The GSR made the following recommendations with respect to the City’s policy and procedure framework:

- 1. There should be a review of the Council Policies with the intent that a Council Policy:*
 - a. Should deal with higher level objectives and strategies;*
 - b. Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
 - c. Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
- 2. As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*
- 3. Consideration should be given to developing a new Council Policy which sets out the ‘framework’ for Council Policies, OPPs and other procedures. The new Policy would explain the role to be played by each level of document. It could, for example, be called a Policy Framework Policy.*

Apart from transfer to the new policy format the Policies have only undergone reasonably minor changes.

City officers considered a more *major* and holistic review of development control policies as per the recommendations of the GSR but found that a major review would need to be undertaken within the broader context of development control and the system of Engineering Technical Standards and Specifications that is in place. This is not currently a scheduled work priority and instead it is the intent that a broader systems wide review of the City's development control policies and procedures, and the Engineering Technical Specifications and Standards be conducted by the business unit at a later stage, likely as part of the next round of organisational policy review.

STATUTORY ENVIRONMENT

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

Regulations 12 and 15 of the Local Government (Uniform Local Provisions) Regulations 1996 deals with crossovers in so far as providing provision for and guidance of, the construction of crossovers and the local government contribution towards the construction of crossovers.

RELEVANT PLANS AND POLICIES

The City has a policy framework which was developed and endorsed by Council in response to the recommendations of the GSR. The framework sets out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures.

The City's Engineering Technical Standards and Specifications apply to the Policies, particularly where the standards and specifications relate to Construction (section 3) and Vehicle Crossovers (section 4), Property Development (section 6) and Reinstatements (section 7).

FINANCIAL IMPLICATIONS

There are no financial implications associated with the officer recommendation.

LONG-TERM FINANCIAL PLAN IMPLICATIONS

There are no long term financial plan implications associated with the officer recommendation.

STRATEGIC COMMUNITY OBJECTIVES

The Policies link to the Key Goal Area 6 of the City's Strategic Community Plan 2017, in particular Community Objective 6.4: Assets are well maintained and responsibility managed.

RISK ASSESSMENT

A risk assessment of implementing the officer recommendation was undertaken using the City's risk assessment framework and no risks of a medium or greater level were identified.

CONSULTATION

No external consultation was undertaken in relation to the review of the Policies.

OFFICER COMMENT**Crossovers**

The purpose of this policy is to provide guidelines for the construction of crossovers and the provision of a crossover contribution towards this construction by the City of Busselton. The policy sets out Council's position in relation to crossover construction standards and the provision of a contribution.

No significant changes were made to the policy content other than formatting changes and changes associated with the new format.

Reinstatement of works of Road Reserves

This policy sets out Council's position in relation to construction activities undertaken by a private developer or public utility or their agent within a City of Busselton road reserve, and, that where those works impact on or cause damage to City of Busselton infrastructure, reinstatement works to the satisfaction and specifications of the City must be undertaken.

No significant changes were made to the policy content other than formatting changes and changes associated with the new format.

CONCLUSION

A review of the Policies was undertaken, with only minor changes proposed in accordance with the City's new policy framework and format. The Policies continue to be of relevance and are recommended for adoption.

OPTIONS

Council may decide to not adopt the Policies and instead choose to take a different position or approach.

Council might also require further amendments to the Policies.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policies will be effective as of adoption by Council.

OFFICER RECOMMENDATION

That the Council adopts the:

1. Policy 'Crossovers' as per Attachment B, to replace the current policy (Attachment A).
2. Policy 'Reinstatement Works in Road Reserves' as per Attachment D, to replace the current policy (Attachment C).

6.1 Attachment A Current policy - Crossovers

Last updated 13/04/2016

181	Crossovers	V3 Current
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1. PURPOSE

The City may set the position of the crossover access onto the road, require its construction and/or repair and maintain the crossover as provided for under Regulation 12 of the Local Government (Uniform Local Provisions) Regulations 1996.

The City is required to contribute 50% of the estimated cost of the first "Standard Crossover" to the land, under Regulation 15 Local Government (Uniform Local Provisions) Regulations 1996. This policy provides the standards to be met to establish eligibility for the City contribution and provide guidelines for the safe positioning of vehicle access from private property to the road.

2. SCOPE

All crossovers (a constructed traffic way connecting the paved street to the private property) shall be constructed to the approved Council standards and specifications.

3. POLICY CONTENT

Standard Crossover

General Requirements

A standard crossover does not include the value of culverts or alteration to services or tree removal. Applicants in rural and special rural areas are required to request the advice of City staff regarding the need for and the size of pipes for drainage purposes.

The width of a standard crossover at the property line is to be a minimum of 2.75 metres and splay to 4.5 metres wide at the road edge, with 1.0 metre radii or 1.0 metre truncation at the road edge. The total minimum width of opening at the road edge is 6.5 metres. This configuration represents the Standard Crossover, with the length being variable. Extra width is allowable, with approval of the Chief Executive Officer, but no additional subsidy applies.

Full requirements for meeting the standard crossover are detailed in Council's Standards and Specifications. Area specific requirements are as follows:

Urban Areas

The crossover shall be sealed utilising sprayed bitumen, bituminous concrete, in-situ concrete, paving bricks or blocks.

Rural and Special Rural Areas

All rural and special rural developments require a sealed crossover where a sealed road frontage exists. If the road is gravel Council will allow an unsealed crossover (gravel). The provision of culvert pipes, if required, shall be at cost to the landowner.

Special Character Areas

Within special character areas, such as Old Dunsborough and Eagle Bay, crossovers are to be constructed of materials consistent with an earthy tone such as pea gravel or red asphalt seals.

6.1 Attachment A Current policy - Crossovers

Last updated 13/04/2016

Crossover Subsidy

Council will contribute (or subsidise) half the estimated cost of a standard crossover (one crossover to a property) subject to the crossover being deemed by the Chief Executive Officer to conform with the City's "Standard Crossover".

The crossover subsidy will be determined by the material type and length of the crossover based on the dimensions of a standard crossover.

The subsidy applies to the first crossover to a lot for industrial, business, commercial and all residential buildings. In the case of strata titles, a subsidy will apply to each title for the crossover up to the number of titles.

Crossovers, eligible for subsidy, may be claimed for at the subsidy rate that applies in the financial year construction is completed. Crossovers in excess of one year old shall have a reduced subsidy based on straight line depreciation, for age and type, as per the following: (Crossovers in excess of this life are not eligible for a subsidy claim).

Crossover Type Maximum Crossover Life

2 Coat Seal	10 years
Asphalt	15 years
Brick/Block	20 years
Concrete	25 years

Construction

The Owner/Agent is to arrange for construction. Any alterations for the removal/relocation of the conflicting public utilities, such as drainage pits and structures, services inspection pits, power or light poles, traffic medians and street trees will be at the owner's cost and subject to the approval of the service authority concerned. Alternative alignments and/or position of crossovers will be considered by the Shire.

Where a footpath exists within the road verge the footpath is to take priority over a crossover. The footpath is not to be removed to make way for a crossover, rather the crossover is to butt up to the footpath on both sides.

Road safety and turning radii will be taken into account in deciding the position of a crossover. Owners are advised when designing building/s requiring vehicle access from the street to take into account services, public utility services and street trees.

Crossover Maintenance

Council will not be responsible for maintenance of crossovers. Council will not subsidise the maintenance or replacement of crossovers.

Policy Background

Policy Reference No. - 181

Owner Unit – Engineering and Facilities Services

Originator – Director, Engineering and Works Services

Policy approved by – Council

Date Approved – 13 April, 2016

Review Frequency – As required

Related Documents –


Local Government (Uniform Local Provisions) Regulations 1996

Last updated 13/04/2016

History

Council Resolution	Date	Information
C1604/079	13 April, 2016	Update to City Terminology and business unit and Directorate details. Inclusion of requirements for footpaths to take priority over crossovers and for landowners to be responsible for culvert pipes. Version 3
C1012/429	8 December, 2010	Updated to remove requirement for bonds Version 2
		Version 1

COUNCIL POLICY


City of Busselton
Geographic Bay

Council Policy Name: Crossovers

Responsible Directorate: Engineering and Works Services

Version: Proposed

1. PURPOSE

- 1.1. The purpose of this Policy is to ensure that the construction of Crossovers within the City of Busselton align to the *Local Government (Uniform Local Provisions) Regulations 1996* and meets the City's Engineering Technical Standards and Specifications. It provides guidance on the requirements for eligibility to receive a Crossover Contribution from the City.

2. SCOPE

- 2.1. This Policy is applicable to construction of all approved Crossovers.

3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council Policy entitled "Crossovers"
Crossovers	The section of a driveway between the road and the property boundary
Standard Crossover	A Crossover as defined within the <i>Local Government (Uniform Local Provisions) Regulations 1996</i> , and that meets the requirements set out in this Policy and contained within the City's Engineering Technical Standards and Specifications.
Crossover Contribution	The City of Busselton's contribution towards the construction of a Standard Crossover, as per Regulation 15 of the <i>Local Government (Uniform Local Provisions) Regulations 1996</i>

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 6 of the City's Strategic Community Plan 2017 and specifically Community Objective 6.4: Assets are well maintained and responsibly managed.

5. POLICY STATEMENT

- 5.1. This Policy provides guidelines for the construction of Crossover such as they are constructed to appropriate standards and specifications and outlines what the City of Busselton's Crossover Contribution will be.

Standard Crossover

- 5.2. The width of a Standard Crossover at the property line is to be a minimum of 2.75 metres and splay to 4.5 metres wide at the road edge, with 1.0 metre radii or 1.0 metre truncation at the road edge. The total minimum width of opening at the road edge is 6.5 metres. The length is variable, with extra width being allowed on approval from the Chief Executive Officer, but with no additional Crossover Contribution being applicable.
- 5.3. A Standard Crossover does not include the value of the culverts or any required alteration to services/infrastructure or vegetation removal.
- 5.4. Applicants in rural and special rural areas are required to seek advice from the City regarding the need for and the size of pipes for drainage purposes.

6.1 Attachment B Proposed Policy - Crossovers

- 5.5. Full requirements for meeting the Standard Crossover are detailed in the City's Engineering Technical Standards and Specifications. In general applicants should seek advice from the City to ensure proposed works comply with the requirements for a Standard Crossover.

Crossover Contribution

- 5.6. A Crossover Contribution will only be paid to the current owner of the property.
- 5.7. The City of Busselton will contribute half the estimated cost of construction of a Standard Crossover as is required by Regulation 15 of the *Local Government (Uniform Local Provisions) Regulations 1996*, at the rate set by Council.
- 5.8. The Crossover Contribution amount will be determined by the material type and length of the crossover, based on the dimensions of a Standard Crossover.
- 5.9. The Crossover Contribution value will not include the cost of drainage, alteration to services/infrastructure or the removal of vegetation.
- 5.10. Crossovers which do not meet the minimum requirements for a Standard Crossover are not eligible for a Crossover Contribution.
- 5.11. Crossovers which exceed the dimension requirements of a Standard Crossover will receive a Crossover Contribution based on the dimensions of a Standard Crossover.
- 5.12. The Crossover Contribution applies to the first crossover to a lot for industrial, commercial and all residential properties. In the case of strata titles, a Crossover Contribution will apply for each individual title which has a Standard Crossover.
- 5.13. Crossover Contributions should be applied for in the financial year when construction is completed to receive the full Crossover Contribution. Crossovers in excess of one year old will have a reduced Crossover Contribution based on a straight line depreciation for age and type, as per the following:

Crossover Type	Maximum Crossover Life
2 Coat Seal	10 years
Asphalt	15 years
Brick pavers/blocks	20 years
Concrete	25 years
Crossovers in excess of this life are not eligible for a Crossover Contribution	

Construction

- 5.14. All costs for the construction of a Crossover and related works will be borne by the owner or agent of the owner.
- 5.15. Consideration must be given to relevant vehicle turning movements for ingress/egress to/from the property.
- 5.16. Where construction works will impact on public roads, a traffic management plan must be submitted by the contractor to the City for review and approval prior to commencement of construction of the Crossover.

Maintenance

- 5.17. The City of Busselton is not responsible for and will not contribute towards the cost of maintenance or replacement of Crossovers.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. *Local Government Act 1995*, Schedule 9.1 (7)
- 6.2. *Local Government (Uniform Local Provisions) Regulations 1996*, Regulations 12 – 16.
- 6.3. City of Busselton Engineering Technical Standards and Specifications

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	13/04/2016	Resolution #	C1604/079

6.1 Attachment C Current Policy - Reinstatement of Works in Road Reserves

Last updated 13/04/2016

195	Reinstatement of Works in Road Reserves	V3 Current
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1. PURPOSE

This policy is to provide guidelines to ensure the City of Busselton's expectations are met where road or public utility works are carried out in a road reserve by contractors.

2. SCOPE

The policy applies to any occasion when reinstatement of a road reserve is required due to contractor activity.

3. POLICY CONTENT

Where road or public utility works carried out by contractors occurs in a road reserve it is to be ensured that there is full reinstatement and that all costs for reinstatement of drainage to roads, paths, street furniture, lawns, gardens, planting, trees, verge vegetation and drains are met by the contractor.

The contractor will use underground boring construction methods in order to avoid the removal of trees and vegetation.

In exceptional circumstances the City of Busselton may agree to tree removal/vegetation removal where it is not possible to underground bore for technical reasons and no alternative route for the service is available. In this instance the contractor will be required to replant with equivalent plant species and tree species in order to return the verge to pre work standards. Vegetation planting and tree planting/species will be in accordance with the City of Busselton's Technical specifications. If specialist arborist are required this will be at the cost of the contractor.

Works completed by contractors require the approval of specifications to Council adopted standards, endorsement of a Traffic Management Plan (TMP) and payment of a bond according to Council's Standard Fees and Charges prior to commencement and prior to excavations. Where works are carried out by a contractor under the management and supervision of a Public Utility no payment of bonds is applicable subject to there being a 12 months defects period.

Council requires payment in advance, where the reinstatement is undertaken by the City of Busselton, based on standard rates in the Schedule of Fees and Charges. Retention of contractor payments by a recognised public utility for the purpose of securing the reinstatement is acceptable in lieu of a bond.

The contractor shall leave and maintain the site in a safe condition and where excavation and trenching takes place, carry out the backfill and compaction using the appropriate materials, to Council's standards and specifications, until such time as the reinstatement is complete. Aftercare signage and delineation in accordance with a City of Busselton endorsed traffic management plan shall remain in place until the reinstatement is complete.

Pre-works and post-works inspections are to be carried out to determine any existing defects and to ensure any reinstatements are carried out to the City's standards and specifications.

Last updated 13/04/2016

The City of Busselton may carry out surface repairs, such as to paths, drains, road concrete crossovers and kerbing, not completed to its satisfaction and within 14 days of completion of backfill of excavations using the expenses to recover. Bonds shall be retained for a minimum of three months after completion of the reinstatement to ensure failure, subsidence or fault can be rectified.

4. APPLICATION OF THE POLICY

The policy shall be applied by Engineering and Works Services.

Policy Background

Policy Reference No. - 195
Owner Unit – Engineering and Facility Services
Originator – Historical
Policy approved by – Council
Date Approved – 13 April, 2016
Review Frequency – As required
Related Documents – N/A

History

Council Resolution	Date	Information
C1604/081	13 April, 2016	Inclusion of requirement for a Traffic Management Plan, retention of signage, expanded inspection requirements and expanded vegetation retention requirements. Version 3
C1206/155	27 June, 2012	Update to new policy format Version 2
		Version 1

COUNCIL POLICY


City of Busselton
Geographic Bay

Council Policy Name:

Reinstatement Works in Road Reserves

Responsible Directorate:

Engineering and Works Services

Version:

Proposed

1. PURPOSE

- 1.1. The purpose of this Policy is to ensure that where works are carried out in a Road Reserve, any impact or damage caused to City of Busselton infrastructure is reinstated to the satisfaction and specifications of the City.

2. SCOPE

- 2.1. This Policy is applicable to construction activities undertaken by public utilities or private developers (and their agents) within a City of Busselton Road Reserve.

3. DEFINITIONS

Term	Meaning
Policy	this City of Busselton Council Policy entitled "Reinstatement Works in Road Reserves"
Reinstatement Works	Works undertaken which are necessary to repair, reinstate or replace assets to their original, or as close to their original, state.
Road Reserve	An area of land set aside for potential road construction, on which building is not allowed

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 3 of the City's Strategic Community Plan 2017 and specifically Community Objective 3.1: Development is managed sustainably and our environment valued.

5. POLICY STATEMENT

- 5.1. All Reinstatement Works within a Road Reserve are to be completed to the minimum requirements as set out in the City of Busselton's Engineering Technical Standards and Specifications, the IPWEA Specifications for "Restoration and Reinstatements for Local Governments" and the Utility Providers Code of Practice for Western Australia.
- 5.2. Prior to commencement of Reinstatement Works within a Road Reserve, a traffic management plan is to be submitted to the City for review and endorsement.
- 5.3. All costs of Reinstatement Works are to be borne by the public utility, private developer or their agent.
- 5.4. Reinstatement works are to be carried out as soon as is practicable. Temporary Reinstatement Works must be maintained to ensure serviceability and safety of infrastructure.
- 5.5. Wherever practical, underground boring construction methods are to be used to avoid damage to City infrastructure and the removal of vegetation.

6.1 Attachment D Proposed Policy - Reinstatement Works in Road Reserves

- 5.6. Where underground boring is not possible and no alternative route for the service is available, the City will consider the removal of vegetation.
- 5.7. No removal of vegetation may be undertaken without the City's explicit approval and no removal of native species may occur without appropriate environmental or regulatory approvals.
- 5.8. Damaged or removed vegetation will generally be replaced with equivalent species and at the cost of the public utility, private developer or their agent.
- 5.9. A pre-work inspection of proposed service alignments is to be carried out by the contractor and the City to identify infrastructure damaged prior to commencement of works.
- 5.10. Maintenance bonds will apply for Reinstatement Works by a private developer, based on rates in the City's Schedule of Fees and Charges. Maintenance bonds will not apply for Reinstatement Works by a public utility.
- 5.11. After a 12 month post-work maintenance period, the City will inspect the Reinstatement Works. Where the works are to the satisfaction of the City, the City will process the return of applicable maintenance bonds.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. City of Busselton Engineering Technical Standards and Specifications.
- 6.2. IPWEA (WA) "Restoration and Reinstatements Specification for Local Governments".
- 6.3. Utility Providers Services Committee "Utility Providers Code of Practice for Western Australia".

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	13/04/2016	Resolution #	C1604/081

6.2 REVIEW AND CONSOLIDATION OF COUNCIL POLICY 134 (WORKS AND DEVELOPMENT ON FORESHORE AND LANDSCAPE PROTECTION RESERVES) AND COUNCIL POLICY 240 (RESERVES VEGETATION PROTECTION), AND PROPOSED NEW POLICY PRIVATE WORKS ON CITY LAND, INCLUDING COASTAL PROTECTION WORKS.

SUBJECT INDEX:	Council Policy
STRATEGIC OBJECTIVE:	Natural areas and habitats are cared for and enhanced for the enjoyment of current and future generations.
BUSINESS UNIT:	Planning and Development Services
ACTIVITY UNIT:	Planning and Development Support
REPORTING OFFICER:	Director, Planning and Development Services - Paul Needham
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Existing Policy 134 - Works and Development on Foreshore and Landscape Protection Reserves ↓ Attachment B Existing Policy 240 - Reserves Vegetation Protection ↓ Attachment C Private works on City Land, including coastal protection works ↓

PRÉCIS

This report reflects the outcomes of a review of two existing Council policies; Policy 134 - Works and Development on Foreshore and Landscape Protection Reserves (Policy 134) and Policy 240 - Reserves Vegetation Protection (Policy 240). The review has regard to the Governance System Review (GSR) carried out by Mr John Woodhouse in 2017.

It is recommended that both of the existing policies be rescinded and that a new, much more targeted policy be adopted, identifying the only circumstance in which the City may contemplate private works or actions on City land (other than where those works or actions are specifically provided for in law or other policy, such as a vehicle crossover, or portable signage, or via a lease or licence to accommodate community or commercial activity), which is for private coastal protection works.

BACKGROUND

Existing Policy 134 is provided as Attachment A and existing Policy 240 is provided as Attachment B. Policy 134 was last reviewed in 2012, but a policy in broadly similar terms has been in place for around 20 years. Policy 240 was last reviewed in 2010, having been first introduced in broadly similar terms around 10 years ago.

In summary, Policy 134 seeks to do the following -

1. Set out that proposals to undertake private works on City land, including landscaping works (including lawns) will not be supported, unless they are consistent with maintenance of landscape, environmental and recreational values and be in the broad public interest; and
2. Set out a process of the approval or acknowledgement of such works.

In summary, Policy 240 seeks to do the following –

1. Set out procedures for addressing the unlawful removal of vegetation from the City land;
2. Provide support for prosecution where evidence exists to take that course of action;

3. Provide for the placement of signage identifying that vegetation has been unlawfully damaged where there is insufficient evidence to prosecute; and
4. Provide for revegetation of areas where vegetation has been unlawfully damaged.

STATUTORY ENVIRONMENT

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

Controls relating to the undertaking of private actions or works on City land are set out in a broad range of legislation, most particularly –

1. *Planning and Development Act 2005* and *City of Busselton Local Planning Scheme No. 21*;
2. *Building Act 2012*; and
3. *Local Government Act 1995*, *Local Government (Uniform Local Provisions) 1996* and *City of Busselton Property and Thoroughfares Local Laws*.

The above set out that, with some very limited exceptions, no works can occur on City land without at least one form of approval having first been granted by the City.

RELEVANT PLANS AND POLICIES

The City has reserve or foreshore management plans for extensive portions of City land, and those plans set out recommendations for the management of that land by the City.

The Council has also adopted relevant policy guidance, including the Compliance Policy and the Portable Advertising Signs in Public Places Policy.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the recommendations of this report.

LONG-TERM FINANCIAL PLAN IMPLICATIONS

There are no Long-Term Financial Plan implications associated with the recommendations of this report.

STRATEGIC COMMUNITY OBJECTIVES

The recommendations of this report reflect Key Goal Area 3 (Environment) of the City's *Strategic Community Plan 2017*, in particular Community Objective 3.2 - 'Natural areas and habitats are cared for and enhanced for the enjoyment of current and future generations'.

RISK ASSESSMENT

A risk assessment of implementing the officer recommendation has been undertaken against the City's risk assessment framework. No risks of 'medium' or higher have been identified.

CONSULTATION

Consultation was not considered necessary in preparing this report.

OFFICER COMMENT

There are existing frameworks, other than the two policies under review, which allow for certain private works or actions on City land. That includes frameworks that allow for construction of vehicle crossings, certain 'verge treatments', portable signage, certain trading activities, and also other things that are possible pursuant to either a licence or lease. There are not considered to be many 'gaps' in those frameworks, the filling of which could or should require Council policy guidance.

More specifically, it is considered that existing Policy 134 either sets out things which are already established in law (i.e. that works on City land should not occur without City approval), or creates some impression that works for private benefit, which should not be supported, may be (i.e. placing lawn or similar on City land, other than a road verge). It is also considered that existing Policy 240 either overlaps with another existing policy (i.e. the Compliance Policy, with respect to situations where formal enforcement action is possible), or sets out guidance that officers consider could more appropriately be provided at an operational level either through a Staff Management Practice or an operational procedure document (i.e. the placement of 'vegetation damaged' signage). As such, it is recommended that both existing policies are withdrawn from effect.

Officers have, however, identified a situation in which private works may be considered on City land, and where there is thought to be value in Council adopting a policy that guides consideration of such proposals. That situation is private coastal protection works where properties directly adjoin foreshore reserves, but other adjoining or nearby properties may be 'high water mark' titles, or be surveyed titles that extend beyond the high water mark, and from a physical processes perspective, it does not make sense to limit coastal protection works to private property only (in simple terms, private seawalls all need to 'line up with each other').

Reflecting practice over the last decade or so, it is proposed that such works only be supported where the works are properly designed, engineered and take the form of removable geotextile bag seawalls, and that approval be time limited, to a maximum of ten years, to avoid the incorrect assumption that such works can or should provide 'long-term' protection, and allow for a timely change of strategic direction, should that be necessary. It should be noted that this approach should be reviewed as part of and following the development of the City's Coastal Hazard Risk Management Adaptation Plan (CHRMAP), or more simply 'Coastal Adaptation Strategy'. That process is expected to be completed in the latter part of 2019.

There are two other kinds of situations where policy guidance was seriously considered by officers, but is not recommended.

The first kind is private works to vegetate or revegetate City land. This could be supported in some instances, especially where it involves locally endemic species and could provide useful habitat for endemic fauna, but it is considered that the City's Environment Policy and Environment Strategy and associated guidelines already provide an appropriate framework.

The second kind is works to manage vegetation on City land to achieve bushfire safety outcomes. The first reason this has not been supported by officers relates to a view that the management of City land should be done on the basis of what is in the long-term interests of the community as a whole, rather than the interests or needs of particular landowners at any given time, and that the best means of doing that is via the development of plans and programmes by the City itself, guided by community consultation as appropriate. The processes through which the City does that are reserve management planning processes and, currently, through the development of an overall Bushfire Risk Management Plan (BRMP). The second reason this has not been supported is that, whilst such an approach could provide some relief to landowners who are significantly affected by the State's current bushfire risk related planning and building laws and policies, it would impose significant risks and costs on the City and other ratepayers.

Having said this the Policy does retain a broader scope / policy statement reflecting that private works on City land will not generally be supported except where provided for in certain circumstances such as being provided for in a plan, policy or legislation. The policy also identifies the broad circumstances where the removal of vegetation on City land for the purposes of private works may be supported, and highlights that any associated costs are to be met by the proponent.

CONCLUSION

It is considered that the existing Policy 134 and Policy 240 should be withdrawn, and that a new more targeted policy should be adopted. The proposed policy is provided as Attachment C.

OPTIONS

The Council could decide to maintain more of the current policies' substance in Council policy and/or propose alternative changes/inclusions to the proposed policy.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The recommendation would be undertaken through the publication of the new policy on the City's website, as well as the removal of the existing policies from the website. A new operational practice or procedure relating to the erection of 'vegetation damaged' signage would also be developed. It is expected these actions would be completed within four weeks of the Council making a resolution consistent with the officer recommendation.

OFFICER RECOMMENDATION

That the Council -

1. Withdraw from effect Policy 134 and 240; and
2. Adopt Council Policy 'Private Works on City Land, including Private Coastal Protection Works' (Attachment C).

Last updated 22 August 2012

134	Works and Development on Foreshore and Landscape Protection Reserves	V2 Current
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1. PURPOSE

This policy establishes a decision making process for consideration of proposals for private development / improvement / upgrading / vegetation removal or modification, including all forms of access and public facility development, but excludes ongoing maintenance, in coastal, other foreshore and landscape protection reserves whether these works are undertaken by the City or other individuals, groups or agencies. This is designed to achieve preservation of the landform and natural vegetation of coastal, other foreshore and landscape protection reserves while providing public and adjoining owners reasonable access to use and pass through such reserves.

2. SCOPE

This policy applies to all City reserves managed for the purpose of foreshore or landscape protection or recreation or other reserves that include areas of coastal or riparian foreshore.

3. POLICY CONTENT

3.1 Definition

Development for the purpose of this policy includes any private works that change the current or natural state of the subject reserve and includes the construction or placement of any structure, planting of lawns and gardens, making of access paths, installation of reticulation and the removal of vegetation. (Procedures in relation to the illegal removal of vegetation or damage are included in Council Policy 240 – Reserves Vegetation Protection Policy.)

3.2 Principles

It is Council Policy to generally preserve the natural land form and vegetation of City managed land while providing public and adjoining occupiers reasonable access and providing facilities for improved public use of such reserves. Proposals for private use of City-managed land will only be supported where it can clearly be demonstrated that such use is consistent with maintenance of landscape, ecological, social and recreational values of the land, and is in the broad public interest.

Modification of vegetation and land form on foreshore reserves, including the planting of lawns and gardens, to extend the area of private occupation or enhance the private use of a reserve is not supported. Such works can contribute to the loss of native vegetation, interferes with natural processes and habitats and, potentially leads to higher maintenance requirements by the City and cost to ratepayers.

6.2 Attachment A Existing Policy 134 - Works and Development on Foreshore and
Landscape Protection Reserves

Last updated 22 August 2012

Powers relating to development of City managed Land

Provisions exist for the potential prosecution and subsequent fining of persons developing City managed land without authorisation under:

- The Local Government Act - Regulation No.5 of Local Government (Uniform Local Provisions) Regulations (1996);
- The District Town Planning Scheme No. 20 (1999);
- Property Local Law 2010.
- Land Administration Act 1997

3.3 Implementation

Approval process

Proposals for any private development, construction, including provision of public facilities and all forms of new access shall be referred to the Council for consideration. Where such proposals are of a minor nature and considered consistent with the intent of the policy this requirement may be addressed by the referral of any such application to all Councillors, and for Councillors to be given a period of not less than 7 days to request the CEO to refer the matter to Council for determination. More significant proposals should be referred direct to Council.

Proposals shall be detailed and address the impact of the development and means by which preservation of the values of the reserve can be maximised. Proposals shall take into account current Local Laws, the Town Planning Scheme, State Coastal Planning Policy SPP2.6, any adopted Foreshore Management Plan, advice from the Department of Planning and the Department of Transport and any specific coastal management recommendations from the Department of Transport.

Proposals will be required to get all relevant statutory approvals, including planning consent. Where development is proposed on Crown land (as distinct from freehold land owned by the City), the planning application needs to be authorised by the Department of Regional Development and Lands as landowner. Where works require ongoing maintenance, a licence agreement will be entered into with the City and the Department. Where works may be of a temporary nature, a bond shall be lodged equivalent to the cost of removing the works and rehabilitating the land.

Works associated with firebreaks and fuel reduction will be determined at an officer level consistent with an adopted Fire Management Plan or Reserve Management plan.

Development without approval

Where lawns/grassing and other gardens or facilities have been extended into reserves prior to the adoption of Council Policy 134/3 (June 1994), and without the approval (of the then) Shire, a retrospective acknowledgement of the works may be issued. Such acknowledgement will only be issued where the works provide a net public benefit, taking into account long term maintenance

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requirements, and do not give rise to a public safety risk. Any retrospective acknowledgement of such works will be on the basis that any City maintenance will be determined by and at the sole discretion of the City and may be amended from time to time.

Where the criteria of public benefit and safety are not met the works should be removed or private maintenance and/or ongoing upgrading ceased. In such cases the City will liaise with the adjacent land owners to confirm who undertook the development. If the party responsible for the works cannot be identified the City may remove the development and reinstate the area consistent with the surrounding reserve.

If the responsible party can be identified they will be requested to remove the works and reinstate the area consistent with the surrounding reserve. Issues associated with unauthorised removal of vegetation will be dealt with under policy "240 – Reserves Vegetation Protection Policy".

It is acknowledged that there are locations where approval and/or inappropriate works have been undertaken and the City has not taken action for, in some cases, considerable periods of time. That should not, in any case, be interpreted as constituting de facto approval of those works. The City does not have the resources and nor would it necessarily be in the public interest to address all instances of non-compliance simultaneously. The City will prioritise action appropriately and may develop strategic approaches from time to time to facilitate compliance in particular areas.

Delineation of City Managed Reserves

The City has a standard reserve delineation marker. The standard marker is a 150 mm diameter post marked "R" and is to be located at the boundary corners or at a distance of not greater than 25 metres along the common reserve / private land boundary. Delineation of City reserves should be undertaken on a progressive basis to enable the public and adjoining landowners to more easily determine what is public and private land.

Policy Background

Policy Reference No. - 134
Owner Unit – Planning and Development Services
Originator – Coordinator, Environmental Planning
Policy approved by – Council
Date Approved - 22 August, 2012
Review Frequency – As required

History

Council Resolution	Date	Information
C1208/235	22 August, 2012	Version 2
		Version 1

Last updated 24/11/2010

240	Reserves Vegetation Protection	V2 Current
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1. PURPOSE

The intention of this policy is to provide a clear direction as to the appropriate response by the Shire in the event of illegal vegetation damage on Shire Reserves, and particularly in respect to riparian or coastal foreshore areas.

2. SCOPE

This policy applies to:

- a) All Shire Reserves and un-allocated Crown Land, including coastal and riparian foreshore reserves and other Shire managed property such as road reserves (whilst damage to vegetation on private land is often an issue there are alternative measures to address this);
- b) Damage to vegetation is defined as including burning, poisoning, pruning, lopping, felling and removal of vegetation that has not been approved by the Shire in writing; and
- c) Vegetation illegally removed from the date of adoption of this policy.

3. POLICY CONTENT

3.1 Objectives

This policy has been developed with the following objectives in mind:

- a) To provide options for responding to illegal vegetation damage on Shire Reserves;
- b) To send a strong message to the community that illegal damage to vegetation on Shire Reserves will not be tolerated;
- c) To provide a mechanism to encourage community members to report illegal damage to vegetation in Shire Reserves; and
- d) To provide a significant deterrent against future illegal damage to vegetation on Shire Reserves.

3.2 Background

3.2.1 Loss of vegetation

Illegal damage to vegetation on public land is a frequent problem within the Shire, particularly in foreshore areas along Geographe Bay. Vegetation is damaged for a number of reasons, ranging from random vandalism to deliberately planned acts, which may be re-occurring, carried out for private benefit such as the enhancement of views.

The problem is leading to a gradual decline in vegetation and a change in vegetation structure resulting in increased weed intrusion along many foreshore areas of Geographe Bay. Vegetation within Shire Reserves is of high importance and often is particularly significant in terms of:

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- * Conservation values including habitat values for endangered species such as the Western Ringtail Possum (*Pseudocheirus occidentalis*) and areas of poorly represented vegetation where protection is a priority;
- * Erosion prevention including beach and dune stabilisation;
- * Visual amenity (being a significant contributor to the character of the Shire);
- * Landscape protection;
- * Shade provision;
- * Wind buffer for residents, beach users and people using foreshore reserves and the DUP; and
- * Cultural and historical significance.

3.2.2 Existing powers to prosecute for damage to vegetation

Provisions exist for the potential prosecution and subsequent fining of persons illegally damaging vegetation within Shire Reserves under:

- * the Local Government Property Local Law 2010;
- * Regulation No.5 of Local Government (Uniform Local Provisions) Regulations (1996);
- * within Landscape Value Areas and reserves under the District Town Planning Scheme No. 20 (1999); and
- * Environmental Protection Act (1986).

While appearing comprehensive the requirements in terms of evidence to achieve a successful prosecution, given the nature of the offence, are such that it is inappropriate and ineffective as the sole means of responding to such incidents. Specific limitations are:

- * prosecution is rarely pursued due to the fact that it is very difficult and rare to gain sufficient evidence to identify the person responsible (i.e. catch the person in the act, or have an eye witness willing to testify as the illegal activity is often undertaken outside daylight hours);
- * the level of fines applicable under the Local Law and Regulation 5 of the Uniform Local Provisions do not provide significant disincentive;
- * even a successful prosecution, at the expense of the ratepayer does not necessarily address the problem, result in vegetation being reinstated on the site or reduce the benefit to a landowner that may have been achieved from the clearing; and
- * legislation such as the Environmental Protection Act focuses on broader scale clearing (generally greater than 1 ha) and prosecution for the type of vegetation damage that is prevalent on the Shire's foreshores has historically not been pursued.

In previous instances of investigations of illegal clearing, agreements have been reached between the Shire and the offender regarding reinstatement and restoration of the vegetation. However, this can also be problematic as insufficient staff resources have resulted in a lack of compliance checks and these agreements were often not legally binding resulting in a poor outcome.

A number of Local Governments throughout Australia having faced similar circumstances have developed policies or responses centred around signage and

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or systems encouraging community assistance in acquiring evidence in order to attempt prosecution. This policy has been prepared following a review of these responses and includes a number of elements and recommendations that have been trialled and successfully implemented elsewhere.

3.2.3 Approval processes

The Shire has powers to make decisions about what can and cannot occur on Shire managed land. Decisions can be made at a staff level if, for example, a tree poses a safety threat. Following a report of a dangerous tree, a Shire Officer will assess the risk and decide whether or not the tree, or part thereof, needs to be removed. This example is commonly the case for vegetation in a road reserve.

The Shire Technical Specifications Manual Section 9b – Road Verges states retention of native vegetation and use of native plants is encouraged. Existing vegetation, whether natural or introduced, may not be removed without Council approval.

In all cases no vegetation can be removed from Shire managed land without Shire approval.

3.3 Policy Statement

3.3.1 Principles

The following principles guide the policy statement:

- Damage to vegetation on Shire managed land, without the approval of the Shire, is illegal and clearly regarded as unacceptable behaviour by the community;
- Wherever vegetation damage has been done for the purpose of a direct benefit to an adjoining or nearby landowner and sufficient evidence has been obtained, prosecution shall be pursued with the cost of reinstatement and signage sought in addition to applicable penalties;
- Wherever possible and when insufficient evidence for prosecution has been obtained, revegetation/regeneration of damaged areas should be carried out by the Shire;
- At sites where illegal vegetation damage has occurred an assessment based on the amount of vegetation lost, the benefit derived from the damage and the exposure of the site will determine whether signage will be erected to inform the public of the Shire's response and to encourage witnesses to come forward to provide evidence for prosecution;
- In instances where vegetation damage has occurred that directly benefits adjoining landholders (eg view enhancement) and where there is high public exposure, large signs shall be installed within the sightlines to ensure that there is no benefit from illegal vegetation damage or removal, and to inform the community of the nature of the offences and that such activities are not acceptable;

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- The CEO, the Director of Lifestyle Development and the Director of Community Infrastructure should be delegated to instigate prosecution proceedings for vegetation removal under this policy; and
- Signage is to remain in place until the vegetation has regenerated or regrown to the condition it was in prior to when the damage occurred or until the benefit derived from the damage has disappeared.

3.3.2 Illegal damage where eyewitness or perpetrator identified

Where a landholder has admitted to vegetation damage, or an eyewitness is willing to testify against the alleged perpetrator, and prosecution under the Shire Property Local Law, the Local Government Act and/or the Town Planning Scheme is possible then the following response should occur:

- a. Contact the landholder who has admitted or is alleged to have undertaken the damage and provide an opportunity for them to explain their actions and any mitigating circumstances. Where the damage is significant and has been undertaken for the purpose of a personal benefit and there are no valid mitigating circumstances prosecution shall be commenced. The cost of revegetation and signage to the Shire's specification shall be sought in addition to the financial penalty as part of any successful conviction.
- b. Where prosecution is pursued but is unsuccessful or the cost of revegetation not achieved, signage and revegetation should be undertaken at the expense of the Shire.

The action taken here must also be consistent with the Shire's Prosecutions Policy. The Shire Officer must determine the significance of the damage and the personal benefit that has been derived from the action.

In circumstances where the offence is minor the Shire should infringe the offender and take action to seek remedy by replacement of the vegetation damaged and /or the costs to do so, whereas if the damage is significant prosecution is appropriate.

Significant damage shall include the use of poison (sprayed or injected) to kill vegetation, lopping or removal of any tree. Minor damage may include pruning of a tree or cutting of any vegetation where the vegetation would recover and would not be killed.

3.3.3 Illegal damage with no eyewitness or admission of guilt

Where the Shire's investigations fail to identify a suitable eyewitness or admission of guilt, the Shire should determine what action is required to remedy the damage which may include revegetation or allowing the vegetation to regenerate, and erect signage at the site.

3.3.4 Incentive for information leading to prosecution

In instances where the damage to vegetation is particularly significant, or cannot be replaced by revegetation within a realistic timeframe (eg removal of mature coastal vegetation) and a successful prosecution would lead to a significant fine,

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the CEO may offer a financial incentive up to a value of \$500 in order to encourage witnesses to come forward. Payment of the incentive would only occur following a successful prosecution.

3.3.5 Statement of legislation to be used for prosecutions

In instances where the damage has occurred on land shown as a Scheme Reserve on the District Town Planning Scheme No 20, the Scheme shall be applied when initiating prosecution. This policy will not apply to reserves vested in other agencies. In the case of Reserves jointly vested in the Shire and another agency, consultation will be undertaken prior to prosecution.

In instances where the subject land is not shown as a reserve on the Scheme maps, such as road reserves, the Local Government Act Uniform Local Provisions, Section 5 shall form the basis for prosecution.

3.4 Signage

Depending on the nature of the illegal damage to vegetation, two types of signs are considered appropriate.

Type 1 signage shall be installed at all sites where vegetation has been illegally damaged and there is no clear evidence of a direct benefit to adjoining properties. Type 1 signage shall consist of a relatively small sign approximately 900mm by 600mm with the following wording:

SHIRE OF BUSSELTON
VEGETATION IN THIS LOCATION HAS BEEN ILLEGALLY DAMAGED
REGENERATION OF THE PLANTS IN THIS AREA IS NOW BEING
MONITORED
IF YOU HAVE INFORMATION REGARDING THIS MATTER OR OTHER
ACTS OF VANDALISM PLEASE CONTACT
SHIRE OF BUSSELTON PH (08) 9781 0444

Type 2 signage shall be installed at all sites where vegetation has been illegally damaged and there is clear evidence of a direct benefit to adjoining properties, such as improved sightlines. The intent of Type 2 signage is to remove the benefit that may have been derived from illegal vegetation damage, and to inform the community that this behaviour is not acceptable. Type 2 signage shall consist of a large sign approximately 1800mm by 1200mm erected in any sightlines created by the illegal vegetation damage with the following wording:

SHIRE OF BUSSELTON
VEGETATION IN THIS LOCATION HAS BEEN ILLEGALLY DAMAGED
REGENERATION OF THE PLANTS IN THIS AREA IS NOW BEING
MONITORED AND THIS SIGN WILL REMAIN IN PLACE UNTIL SUCH TIME
AS THE VEGETATION HAS RE-ESTABLISHED TO THE EXTENT OF THE
ORIGINAL VEGETATION
IF YOU HAVE INFORMATION REGARDING THIS MATTER OR OTHER
ACTS OF VANDALISM PLEASE CONTACT
SHIRE OF BUSSELTON PH (08) 9781 0444

Last updated 24/11/2010

3.4.1 A budget allocation will be made in the Environmental Planning budget each year to cover signage costs. Additional funds may be required if there is a number of offences in one year, however, it is hoped these will reduce with the introduction of the policy.

3.5 Monitoring inspections

The Shire will inspect the sites where signage has been placed on an annual basis at the beginning of winter. Monitoring will be done by taking photographs of the site from the time it was damaged and comparing the height/density of regenerating vegetation to the surrounding vegetation that was not killed and or the remnants of trees that have been poisoned. If there is no surrounding vegetation to compare, a determination must be made and documented at the first inspection about the height and density that is to be achieved by the revegetation of the site.

3.6 Public Awareness

Upon adoption of this policy and at regular intervals thereafter and following each successful outcome, the policy will be the subject of a media release and coverage in Shire community information material to maximise community awareness and the deterrent value of the policy.

3.7 Monitoring and Evaluation

Monitoring, evaluation and review of the policy is critical in the continual improvement in the achievement of the policy objectives.

The policy shall be subject to formal Shire review periodically in accordance with the Shire's review of its policies. This will generally be every 5 years and will involve a review of the cases handled under this policy throughout the previous period and evaluate the effectiveness of the policy in addressing the individual cases that have arisen.

Public feedback received throughout the year and the number of cases of illegal foreshore clearing should form part of this review in order to monitor the policy's effectiveness in deterring illegal clearing and achieving effective reinstatement. This review should culminate in recommendations for improving the operational procedure or policy measures.

History

Council Resolution	Date	Information
C1011/398	24 November, 2010	Updated Version 2
C0703/074	28 March, 2007	Date of implementation. Version 1



1. PURPOSE

- 1.1. The purpose of this Policy is to set out guidance relating to private works on City Land, where existing laws or other policies do not already provide sufficient guidance, such that City Land is appropriately managed.

2. SCOPE

- 2.1. This Policy is applicable to any proposal for private works on City Land, including private coastal protection works on City Land, and has applicability to any other proposals for private works on City land where existing laws or other policies do not already provide sufficient guidance.

3. DEFINITIONS

Term	Meaning
Policy	This City of Busselton Council policy entitled "Private works on City Land, including private coastal protection works on City land"
City Land	Land that belongs to, or is vested in, or under the care, control or management of, the City (including land that may be seasonally or permanently inundated), or other Crown land on which the City has infrastructure.

4. STRATEGIC CONTEXT

- 4.1. This Policy links to Key Goal Area 2 – Places and Spaces, and Key Goal Area 3 – Environment of the City's Strategic Community Plan 2017, and specifically the following Community Objectives:
- a. 2.2: Attractive parks and open spaces that create opportunities for people to come together, socialise and enjoy a range of activities and Community Objective
 - b. 2.3: Creative urban design that produces vibrant, mixed-use town centres and public spaces; and
 - c. 3.1: Development is managed sustainably and our environment valued and Community Objective
 - d. 3.2: Natural areas are cared for and enhanced for the enjoyment of current and future generations.

5. POLICY STATEMENT

- 5.1. City land shall be managed in a manner that is considered by the City to be in the best long-term interests of residents and ratepayers as a whole, and proposals to undertake works or other actions on City land for the benefit or at the initiative of particular private interests will generally not be supported, other than where specifically provided for in a plan or policy of the City, or provided for in legislation, or where it is clearly necessary for the provision of services to private property, with no significant impact on amenity or the environment.

- 5.2. The City may consider approval of private coastal protection works on City land where property directly adjoins City foreshore reserve and adjoining or nearby properties extend to or beyond the high water mark, if the following applies –
- there are, or it is considered likely that there will be, similar structures developed on other nearby land;
 - the protection is to consist of an engineered geotextile seawall, capable of being connected with similar structures on adjoining properties (or on City land, but associated with an adjoining property);
 - all costs of approvals, construction and maintenance are met by the proponents;
 - no other unauthorised works have or will be undertaken within the foreshore reserve, and if there are any existing unauthorised works, they are removed and the land rehabilitated by the proponents;
 - no actions or works are undertaken to limit public access to the beach or foreshore;
 - the proponents obtain and maintain the currency of insurance associated with the structure;
 - the works shall be subject of a time limited approval, of no more than ten years duration; and
 - a licence agreement has been entered into with the City or the State as required.
- 5.3. Removal of vegetation on City Land for the purposes of private works (which in law must always be approved the City) may be supported in the following circumstances:
- where the vegetation is identified as a cause or likely cause of damage to infrastructure and where there are no other ways of managing the damage or risk of damage; or
 - where the works are considered to be necessary and there are no other reasonable alternatives to removal of the vegetation in order for the works to proceed.
- 5.4. The costs of any required environmental or other regulatory approvals (including the cost of any environmental offsets) will be met by the proponent.

6. RELATED DOCUMENTATION / LEGISLATION

- Planning and Development Act 2005 and City of Busselton Local Planning Scheme No. 21;*
- Building Act 2012;*
- Local Government Act 1995, Local Government (Uniform Local Provisions) 1996 and City of Busselton Property and Thoroughfares Local Laws;*
- Environment Strategy;
- Adopted foreshore and reserve management plans;
- Compliance Policy; and
- Environment Policy.

7. REVIEW DETAILS

Review Frequency		3 yearly		
Council Adoption	DATE		Resolution #	
Previous Adoption	DATE	N/A	Resolution #	N/A

6.3 WITHDRAWAL FROM EFFECT OF POLICY 039 - BUILDING PERMIT LISTS

SUBJECT INDEX:	Council Policy
STRATEGIC OBJECTIVE:	Governance systems, process and practices are responsible, ethical and transparent.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Building Services
REPORTING OFFICER:	Manager Governance and Corporate Services - Sarah Pierson
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Council Policy 039 - Building Permit Lists ↓

PRÉCIS

In August 2017 the CEO commissioned a high level independent review of the City's governance systems - the Governance Systems Review (GSR). Included in the scope of the review was the City's policy and procedure framework with recommendations made in relation to the nature and intent of Council policies; namely that Council policies should deal with higher level strategies and objectives.

In accordance with the recommendations of the GSR, the purpose of this report is to recommend that Council Policy 039 - Building Permit Lists (Attachment A) (the Policy), be withdrawn from effect.

BACKGROUND

The Policy, which was last reviewed in March 2017, states that a list of building permits issued will be made available on the City's website each month, with the information to be limited to:

- The applicants name
- The location
- The type of development
- The size / area of the building

The City is required to keep a register of building permits issued under Section 129 of the *Building Act 2011* and is obliged to supply a list of building approvals to public utility providers. Prior to the most recent review of the Policy, the City had a long standing practice (in excess of 20 years) of making its list of building permits issued available for commercial purposes, for which it charged an annual or monthly subscription fee. The City was earning approximately \$6,000 from the sale of the list. In addition to the information above, the value of the development was also included in the listing.

Officers recommended as part of the 2017 review of the Policy that the City continue to make the list available for purchase but that the policy be modified to remove the value of the development, so as to improve on privacy implications for the property owner. While none of the information contained in the register / building permit list is considered to give rise to any security concerns, it was felt that the "value of works" in particular, could conceivably give rise for embarrassment for the owner.

The value of the building work is not relevant to the utility providers that are provided with the List and the value of work is also not an essential requirement of the register, pursuant to s.129. Generally speaking an explicit identification of building value was also not necessary with respect to the commercial sale / purpose of the list, as the building industry will have an expectation of the cost of a development from its application description, the building size and its location.

The Policy and Legislation Committee however recommended to Council that the list of building permits issued each month by the City was made available free of charge via the City's webpage. Council resolved (C1703/038):

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

A list of Building Permits issued by the City each month to be made available via the City’s webpage. The information provided will be limited to only the following items

- *The applicant name*
- *The location*
- *The development floor area size*
- *The type of development”*

This aligned in part to an option presented as part of the Officer’s report:

Delete Community Policy 039 and make the City’s Building Permit register available to view at the City’s website (in addition to maintaining the copy for inspection at the City Offices) and refund the proportion remaining on any current 12 month subscription.

The Policy however was not deleted or withdrawn from effect as part of the Council resolution. This report recommends that that now occur.

STATUTORY ENVIRONMENT

Section 129 of the *Building Act 2011* directs that the City must make the register of Building Permits available for public inspection during normal office hours. Section 129 also provides a discretion to local government, that it may, on payment of a prescribed fee provide a copy of a Register. There is presently no prescribed fee, so in its absence a council can determine the charge.

Section 129 however, only refers only to an individual’s request, it does not address the provision of the register for commercial purposes. This City has previously consulted the Building Commission who advised there is no restriction upon any council from distributing lists and setting a fee for that service.

RELEVANT PLANS AND POLICIES

The GSR was undertaken over a 3 month period by Mr John Woodhouse LLB Juris and made the following recommendations, including, but not limited to, the City’s policy and procedure framework:

1. *There should be a review of the Council Policies with the intent that a Council Policy:*
 - a. *Should deal with higher level objectives and strategies;*
 - b. *Should not deal with operational matters, employee matters, or other matters which are the responsibility of the CEO; and*
 - c. *Should, where appropriate provide sufficient direction to the CEO to develop OPPs which deal with the implementation of the Council Policy or other detailed matters.*
2. *As part of that review, any existing Council Policy should be deleted where it could, more sensibly, be dealt with by an OPP adopted by the CEO.*

In response a Policy Framework has been developed and endorsed by Council, setting out the intent of Council policies, as opposed to operational documents such as Staff Management Practices and operational procedures.

There are no other plans or policies relevant to this matter.

FINANCIAL IMPLICATIONS

The City ceased charging a fee in for making its list of building permits issued available in March 2017 and as such there are no financial implications associated with the officer recommendation to withdraw the Policy from effect.

LONG-TERM FINANCIAL PLAN IMPLICATIONS

There are no long term financial plan implications associated with the officer recommendation.

STRATEGIC COMMUNITY OBJECTIVES

The officer recommendation will not impact adversely on the achievement of any of the community objectives contained within the Strategic Community Plan 2017 and will instead serve to meet the objectives of Key Goal Area 6, specifically community objective 6.1 – Governance systems, processes and practices are responsible, ethical and transparent, by streamlining the City's policy framework.

RISK ASSESSMENT

There are no identified risks of a medium or greater level associated with the Officer recommendation.

CONSULTATION

The Building Commission has previously advised that a council can make its list of building permits approved available for purchase at a fee set by the council. Equally there is no compulsion upon a council to supply lists, or to charge for the supply of the list. Further consultation, nor public consultation, was considered necessary as part of the review of this Policy.

OFFICER COMMENT

The City practice of making its building list available is a longstanding one, in the past for a fee and, since early 2017, available free of charge on the City's website. People likely to inspect the lists are neighbours and prospective purchasers checking that all structures are approved, and commercial operators, generally within the building industry, who are interested in selling their products.

The availability of / refreshing the list on a monthly basis is considered to be an adequate frequency and the process of providing the information on the City's website is now well established operationally. There is no longer a fee or charge determination associated with the provision on the information. The Policy therefore is not considered necessary and, noting the recommendations of the GSR, it is recommended that it be withdrawn from effect.

CONCLUSION

It is recommended that the Policy be withdrawn from effect, as the City has an established operating procedure in place which no longer involves a fee for subscription service or charge. Instead the information is provided as part of standard information provision protocols.

OPTIONS

Council could instead require that the Policy is maintained and updated to the new template and / or further reviewed.

Although not specifically discussed in this report Council could also, as an alternative decide to cease making the building permits list publicly available (outside of its statutory requirements to) or it could decide to set a fee for the commercial provision of the information, as per its previous position.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The Policy will be withdrawn from effect immediately upon adoption of the Officer Recommendation.

OFFICER RECOMMENDATION

That the Council withdraws from effect Council Policy 039 – Building Permit Lists.

Last updated 08/03/2017

039	Building Permit Lists	V3 Current
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A list of Building Permits issued by the City each month to be made available via the City's webpage.

The information provided will be limited to only the following items

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

Council Resolution	Date	Information
C1703/038	8 March, 2017	Policy renamed to Building Permit Lists Version 3
C1007/238	14 July, 2010	Policy renamed and redeveloped to Building and Development Lists to replace 039/1 Electoral Rolls Version 2
		039/1 Electoral Rolls Version 1

7. **GENERAL DISCUSSION ITEMS**

8. **NEXT MEETING DATE**

9. **CLOSURE**