

Local Planning Policy No. 4.11 Exempt Development

Version: Proposed

1. HEAD OF POWER AND SCOPE

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes) Regulations 2015* (WA), Schedule 2 ('Deemed Provisions'), Clause 4 and applies to development across the whole of the City.

Clause 61 of the Deemed Provisions identifies that development approval is not required for a range of matters, and further allows local governments the ability to further exempt development types by specifying those development types within a local planning policy.

2. PURPOSE

The purpose of this policy is to establish development that is exempt from requiring development approval to:

- 2.1. Provide certainty about what development is exempt from the need for development approval; and
- 2.2. Streamline the land use planning regulatory process; and
- 2.3. Ensure acceptable development outcomes are maintained.

Note 1: These exemptions are in addition to development identified in Clause 61, 'Development for which development approval not required', of the Deemed Provisions and clause 6.1 Permitted Development of the Scheme.

Note 2: It should be noted that whilst this Policy identifies certain development types that do not require development approval, other approvals, including a building permit, may still need to be obtained from the City.

3. INTERPRETATION

Terms should be interpreted in the same way as they would be interpreted if they were contained or within the Scheme, other than those terms defined below:

"BAL" means Bushfire Attack Level as determined in accordance with *Australian Standard AS3959: Construction of buildings in bushfire-prone areas* (as amended).

"Deemed Provisions" means Schedule 2 - Deemed provisions for local planning schemes of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

"Heritage significance" means a place that is —

- (i) entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990* (WA);
- (ii) the subject of an order under the *Heritage of Western Australia Act 1990* (WA) Part 6;
- (iii) included on a heritage list prepared in accordance with this Scheme;
- (iv) within an area designated under the Scheme as a heritage area; or
- (v) the subject of a heritage agreement entered into under the *Heritage of Western Australia Act 1990* (WA) section 29.

Note 3: In relation to point (iv) above, there are currently no 'heritage areas' within the City of Busselton

“Incidental development” means any non-habitable structure associated with a Single House, not considered to be an Outbuilding, that is not located under the main roof of the Single House and/or is not attached to the Single House and includes, but is not limited to, the following:

- (a) patio;
- (b) pergola;
- (c) shade sail;
- (d) decking not more than 500mm above natural ground level;
- (e) swimming pool where no part of the swimming pool structure is more than 500mm above natural ground level other than an associated safety barriers in accordance with *AS1926.1 & AS1926.2* (as amended) provided the safety barriers comply with the definition of ‘visually permeable’ (as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended)).
- (f) retaining and fill not more than 500mm above natural ground level; and/or
- (g) water tank/s.

“Outbuilding” as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended) and means ‘An enclosed non-habitable structure that is detached from any dwelling.’

“Residential Development” means Single Houses, Ancillary Dwelling, Grouped Dwelling and/or Multiple Dwellings.

“Scheme” means the *City of Busselton Local Planning Scheme No. 21* (as amended).

“Solar Collectors” as defined by *State Planning Policy 7.3: Residential Design Codes Volume 1* (as amended) and means ‘Solar collecting components of the following: thermal heating systems, photovoltaic systems (i.e. solar panels) and skylights.’

4. POLICY STATEMENT

Except as otherwise provided in the Deemed Provisions or Scheme, the following development does not require the development approval of the local government –

- 4.1 The erection or extension of a Single House, Outbuilding and/or Incidental Development in the Rural, Viticultural and Tourism, Rural Residential, Conservation, Rural Landscape and Bushland Protection zone, where-
- (a) The development is not located within one of the following Special Control Areas:
 - (i) Airport Protection; or
 - (ii) Coastal Management; or
 - (iii) Development Investigation; or
 - (iv) Floodway; or
 - (v) Landscape Value; or
 - (vi) Special Character; or
 - (vii) Special Provision; or
 - (viii) Waste Water Exclusion; or
 - (ix) Waste Water Buffer; or
 - (x) Wetland; and

- (b) Unless supported by a Local Development Plan, the development does not require the exercise of discretion by the local government under the Scheme including, but not limited to, the following:
 - (i) Clause 4.8 Height of Buildings; and
 - (ii) Clause 4.31 Clearing of land in rural areas or land coded R2, R2.5 or R5; and
 - (iii) Clause 4.33 Building Envelopes in Rural Areas; and
 - (iv) Clause 4.34 Building Materials and Visual Amenity in the Rural Landscape and Conservation zones; and
 - (v) Clause 4.36 Setback requirements in the Rural and Viticulture and Tourism zones; or
 - (vi) Clause 4.37 Special Provisions relating to the Conservation zone; or
 - (vii) Clause 4.38 Special Provisions relating to the Rural Residential Zone; or
 - (viii) Clause 4.39 Special Provisions relating to the Rural Landscape Zone; or
 - (ix) Clause 4.40 Special Provisions relating to the Bushland Protection Zone; and
- (c) The development is consistent with any Detailed Area Plan, Development Guide Plan, Structure Plan adopted pursuant to the Scheme; and
- (d) The development is consistent with the quantitative standards in any local planning policy; and
- (e) The development is not located in a place that is recognised as having Heritage significance; and
- (f) Where the development is located within a Bushfire Prone Area, the development has a BAL of BAL-29 or lower or the works are exempt from compliance with State Planning Policy 3.7 – Planning in Bushfire Prone areas including the Guidelines for Planning in Bushfire Prone Areas.

Note 4: The above exemption excludes dwellings which are re-purposed or second-hand dwellings as defined by the Scheme.

Note 5: The above exemption does not apply to an outbuilding on a vacant lot in the Rural Residential, Conservation, Rural Landscape and Bushland Protection zones. An outbuilding on a vacant Rural and/or Viticulture and Tourism zoned lot, that meets the above requirements, is exempt from requiring development approval.

- 4.2 Solar collectors associated with a development where the Residential Design Codes of WA (R-codes) do not apply and:
 - (a) Are positioned on the roof of a building; and
 - (b) Have a maximum projection of 1.5m from the point of the roof where it is attached; and
 - (c) The building is compliant with the height controls prescribed within clause 4.8 – Height of Buildings of the Scheme; and
 - (d) The development is located in a place that is not recognised as having Heritage significance.

Note 6: Where the R-codes apply, solar collectors which meet the deemed-to-comply criteria of clause 5.4.4 External fixtures of the R-codes, are exempt as per the Deemed Provisions.

- 4.3 A flag pole;
 - (a) That is not an advertisement; and
 - (b) Does not display offensive material; and

- (c) The flag affixed is no larger than 2m² on either side; and
 - (d) Is located such that the pole, including all supporting structures, and flag at full extension when attached to the pole are contained within the lot boundaries; and
 - (e) Has a maximum height of 6m above natural ground level and 200mm in diameter; and
 - (f) Setback a minimum of 1.5m from any lot boundary; and
 - (g) No more than one flag pole per lot is to be erected.
- 4.4 An outdoor eating facility located on a public place subject to an outdoor eating permit pursuant to the City of Busselton Activities in Thoroughfares and Public Places and Trading Local Law 2015.
- 4.5 One outbuilding equal to or less than ten square metres in size per Residential zoned lot that meets the following:
- (a) Wall and ridge height are consistent with Appendix 1 of Local Planning Policy 4.10 – Outbuildings and other Non-habitable Buildings; and
 - (b) Not located within the front setback area; and
 - (c) There is a dwelling on the lot.

5. REVIEW DETAILS

Review Frequency		2 yearly		
Council Adoption	DATE	9/9/2020	Resolution #	(C2009/204)
Previous Adoption	DATE		Resolution #	