

# Local Planning Policy No. 4.11

## EXEMPT DEVELOPMENT



### 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*

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**“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

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- (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.

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*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 2m<sup>2</sup> 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 #	