

Please note: These minutes are yet to be confirmed as a true record of proceedings

CITY OF BUSSELTON

MINUTES FOR THE POLICY AND LEGISLATION COMMITTEE MEETING HELD ON 22 JANUARY 2019

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MINUTES

MINUTES OF POLICY AND LEGISLATION COMMITTEE HELD IN THE COMMITTEE ROOM, ADMINISTRATION BUILDING, SOUTHERN DRIVE, BUSSELTON, ON 22 JANUARY 2019 AT 2.00PM.

1. DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Presiding Member opened the meeting at 2.00pm

2. ATTENDANCE

Presiding Member:

Cr Grant Henley

Members:

Cr Ross Paine
Cr Lyndon Miles
Cr John McCallum (Deputy Member)
Cr Coralie Tarbotton (Deputy Member)

Officers:

Mr Paul Needham, Director, Planning and Development Services
Mr Tony Nottle, Director, Finance and Corporate Services
Mr Daniell Abrahamse, Acting Director, Engineering and Works Services
Ms Sarah Pierson, Manager, Governance and Corporate Services
Mr Ronald Wildschut, Development Control Coordinator
Miss Kate Dudley, Administration Officer, Governance

Apologies:

Cr Rob Bennett
Cr Kelly Hick

3. PUBLIC QUESTION TIME

Nil

4. DISCLOSURE OF INTERESTS

Nil

5. CONFIRMATION AND RECEIPT OF MINUTES

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

COMMITTEE DECISION

PL1901/229 Moved Councillor C Tarbotton, seconded Councillor R Paine

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





CARRIED 5/0

2.02pm

At this time the Director of Planning and Development Services and the Director of Finance and Corporate Services entered the meeting.

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.

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION




PL1901/230 Moved Councillor J McCallum, seconded Councillor C Tarbotton

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).

CARRIED 5/0

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.

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION


PL1901/231 Moved Councillor J McCallum, seconded Councillor C Tarbotton

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).

CARRIED 5/0

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.

COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION

PL1901/232 Moved Councillor C Tarbotton, seconded Councillor R Paine

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

CARRIED 5/0

7. GENERAL DISCUSSION ITEMS

Nil

8. NEXT MEETING DATE

Tuesday, 12 February 2019

9. CLOSURE

The meeting closed at 2.18pm.

THESE MINUTES CONSISTING OF PAGES 1 TO 14 WERE CONFIRMED AS A TRUE AND CORRECT RECORD ON TUESDAY, 12 FEBRUARY 2019.

DATE: _____

PRESIDING MEMBER: _____