

2.5: NEW BUILDING ACT 2011

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| Land Description | : Whole of Municipality |
| Proponent | : City of Albany |
| Attachment | : 1. Revocation of existing delegations : 2. Delegation of Authority – Building Permits : 3. Delegation of Authority – Demolition Permit : 4. Delegation of Authority – Grant of Occupancy Certificates : 5. Delegation of Authority – Extension of Occupancy : Certificates : 6. Delegation of Authority – Building Fees : 7. Delegation of Authority – Building Orders : 8. Delegation of Authority - Authority to prosecute : 9. Proposed Fees |
| Responsible Officer | : E/Director Planning & Development Services (G Bride) |

IN BRIEF

- To provide Council with an overview of the changes to building control in Western Australia resulting from the *Building Act 2011*.
- Council consideration is also sought on delegation of powers and fees associated with the *Building Act 2011*.

**ITEM 2.5: RESOLUTION 1
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR HORTIN
SECONDED: COUNCILLOR ATTWELL**

THAT Council notes the approach that Officers will take in response to the *Building Act 2011*.

CARRIED 11-0

**ITEM 2.5: RESOLUTION 2
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

**MOVED: COUNCILLOR ATTWELL
SECONDED: COUNCILLOR DUFTY**

THAT Council:

- (1) Revoke delegations shown in Attachment 1 and adopt new delegations as shown in Attachment 2, which are to take effect from the proclamation of the *Building Act 2011*.**
- (2) Adopts the proposed City of Albany Schedule of Fees and Charges for the assessment of uncertified Class 2 to Class 9 building applications and other related fees as shown in Attachment 3.**
- (3) Approves giving Local Public Notice of the fees and charges in (3) above, pursuant to section 6.19 of the *Local Government Act 1995*, with effect from the proclamation of the *Building Act 2011*.**

**CARRIED 11-0
ABSOLUTE MAJORITY**

BACKGROUND

1. Building control in Western Australia is currently administered under the provisions of the *Local Government (Miscellaneous Provisions) Act 1960*, which identifies local governments as the sole authority to assess building licence applications and issue approvals.
2. Following a review of building regulations by the former Housing and Works and Consumer Protection portfolios, a recommendation was made that the legislation be updated to reflect modern building practices in Western Australia.
3. To this end, the Government has been working on a Building Regulation Reform package which is planned to deliver the most significant transformation to Western Australian building legislation in over 50 years. The existing building approvals process was established by the *Local Government Act 1960* and reflects the way buildings were designed in the 1950's, relying on builders registered under the *Builders' Registration Act 1939*.
4. The Building Regulation Reform package consists of 4 Acts:
 - *Building Act 2011*;
 - *Building Services (Registration) Act 2011*;
 - *Building Services (Complain Resolution and Administration) Act 2011*; and
 - *Building Services Levy Act 2011*.
5. The *Building Act 2011 (Act)*, which will have the most impact on local government, was passed by State Parliament in June 2011. It is anticipated that the Act will come into effect on 1 January 2012 with a phased implementation over 12 months.

6. The anticipated outcomes of the reform package should be a more responsive and modern building regulatory system that meets the changing needs of building industry participants and consumers.
7. While the new Act will alter some traditional duties and responsibilities of local government, the full impact of the proposed changes will not be known for approximately 12 to 18 months.
8. A major change to process under the Act is to separate the process of certifying compliance with the Building Code of Australia, and other standards, from the administrative process of issuing permits. The introduction of Private Certification will remove the sole role of local government as the building licence application assessor. Applicants will have the option of engaging the services of a registered private building surveyor or a registered building surveyor working for a local government.
9. The Act will establish Permit Authorities to issue permits and notices/orders, ensure enforcement of permits and retain building records. A Permit Authority can be a local government, Special Permit Authority (a group of local governments) or State Government.
10. A Permit Authority grants all permits that are required under the new building approval system, and ensures that all statutory requirements for the lodgement of a permit application are met, and that the paperwork is complete.
11. A local government as the Permit Authority will be required to provide a certification and approval service for domestic buildings (Class 1 and 10 buildings) and maintain its monitoring and enforcement role within its boundaries. The powers and duties of a Permit Authority in relation to the approval and enforcement roles cannot be delegated to the private sector.
12. However, as the Regulations supporting the *Building Act 2011* have not been completed at this point in time, there is still uncertainty as to the actual role of the Permit Authority in the enforcement area. It is anticipated that there may be an additional role for local government to undertake audits of applications being submitted for accuracy and compliance with the relevant codes.
13. There is also a possibility that local governments will be required to undertake mandatory site inspections for specific buildings to ensure they are constructed in accordance with building standards and the approved plans.
14. Local governments may also provide a certification service for all other classifications of buildings (commercial, industrial and public buildings) where certification from a registered building surveyor is required under the Act.
15. Prior to offering a certification service for non-domestic buildings, a local government is required to ensure the provisions of the *Local Government Act 1995* are not breached.
16. To provide the community with the option of submitting a building application for non-domestic buildings to a registered private building surveyor or a registered local government building surveyor, it is proposed that, in addition to its required role as a Permit Authority, the

City continues to provide, at least in the short-term until the full impact of the legislation and regulations is known, a full range of certification services in relation to building work undertaken in the City of Albany after the implementation of the Act.

17. To prepare for the introduction the Act, it is necessary to adopt:
- a schedule of fees and charges for services not set by statute;
 - new delegations; and
 - new authorisations.

DISCUSSION

18. The City has a building services team that currently provides a complete range of building control services and is capable of providing the same range of services when the new Act comes into effect.
19. It is important that the local building industry is able to access building surveying services on an on-going and uninterrupted basis. There will also be an expectation that residents and small builders will continue to submit building applications to the City for assessment, pay a fee and obtain the necessary approvals to undertake building work.
20. At this point there has been no indication as to whether private registered building surveyors will be readily available within Albany to offer building surveyor services for Class 2 to Class 9 buildings to residents and builders.

Fees

21. As the Act allows for permit authorities to receive fees for applications for building, demolition, and occupancy permits as well as a number of other activities, the Building Commission released a paper *Building Act: Proposed fee modelling for permit authorities* on 5 August 2011.
22. The schedule of fees for permit authorities and local governments proposed by the Building Commission is based on the current fees charged and modified to allow for the new building regulatory process. The following table shows the current and proposed common fees:

| Act Provision | Current fee | Proposed fee |
|--|---|---|
| Building permit application minimum fee | \$85.00 | \$90.00 |
| Building Permit application Class 1 & 10 – uncertified | 0.35% of 10/11 of the estimated value of the proposed construction as determined by the local government but not less than \$85. The 10/11 is an adjustment to recognise the extra cost of building imposed by GST. | 0.318% of the estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90. |
| Building Permit application Class 1 & 10 – certified | No current equivalent | 0.19% of the estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90. |
| Building Approval Certificate for unauthorised Class 1 & 10 – certified | No current equivalent For uncertified application – 0.7% of 10/11 of the estimated current value of the unauthorised work as determined by the local government but not less than \$170. | 0.38% of the estimated current value (inclusive of GST) of the unauthorised work as determined by the permit authority, but not less than \$90. |
| Building Permit Application Class 2 to 9 – certified | No current equivalent For uncertified application – 0.2% of 10/11 of the estimated value of the proposed construction as determined by the local government but not less than \$85. | 0.09% of the estimated value (inclusive of GST) of the proposed building work as determined by the permit authority but not less than \$90. |
| Application for Occupancy Permit for Class 2 to 9 buildings – certified | Certificate of Classification is the closest equivalent. No current fee associated with a Certificate of Classification. | \$90 per application. |

23. The proposed fees are considered to be an interim measure and will be reviewed by the Building Commission once the Act has been in operation for a sufficient period of time to ensure the fees align accurately with the actual costs associated with providing the permit authority functions.

24. While local governments are only required to undertake the role of a Permit Authority, they can, as a service to their community, consider providing other services and be able to charge a fee to recover the cost of those services.
25. Prior to providing the additional services, local governments are required to ensure they do not breach the *Local Government Act 1995*. Other services could include:
- Issuing Certificates of Design Compliance (all classes of building).
 - Issuing Certificates of Construction Compliance (inspection and certification of buildings during construction).
 - Issuing Certificates of Building Compliance (inspection and certification that a completed building is compliant).
 - Conducting inspections for other parties.
26. As there is no indication that registered private building surveyors will be immediately available within Albany, it is proposed as an interim measure that the City continue to provide the full range of building services currently available to the community.
27. The following table shows the proposed fees for uncertified buildings and associated services. The fees in this table are in addition to the fees proposed by the Building Commission. Both fees will be chargeable to building applications.

| Uncertified Applications | |
|--|---|
| Certificate of Design Construction (Class 1 and 10 buildings) | 0.13% of the estimated value (inclusive if GST) but not less than \$90. |
| Certificate of Design Construction (Class 2 to 9 buildings) | 0.09% of the estimated value (inclusive if GST) but not less than \$90. |
| Request to provide a Certificate of Design Construction for buildings outside City of Albany boundaries (Class 1 and 10) | 0.13% of the estimated value (inclusive if GST) but not less than \$90. |
| Request to provide a Certificate of Design Construction for buildings outside City of Albany boundaries (Class 2 to 9) | 0.09% of the estimated value (inclusive if GST) but not less than \$90. |
| Request to provide Certificate of Construction Compliance | \$100 per hour, with a minimum of \$200 |
| Request to provide a Certificate of Building Compliance | \$100 per hour, with a minimum of \$200 |

| Other fees (Excluding GST) | |
|---|--|
| Application for copies of permits, building approval certificates in register | \$50.00 |
| Providing advice on town planning, environmental health or stormwater disposal requirements and/or providing written confirmation of compliance with town planning, environmental health and stormwater requirements. | \$100 per hour, with a minimum of \$200.00 |
| Inspections (per hour) | \$100.00 |

28. The proposed fees are considered an interim measure and have been calculated using the same method used to establish statutory fees (using a percentage of the estimated building value) or cost recovery, as required by section 6.17 of the *Local Government Act 1995*, taking into account direct and other costs associated with providing the service.

Delegations

29. With the introduction of the Act, the current delegations for building surveyors, which were authorised under the *Local Government (Miscellaneous Provisions) Act 1960*, will become redundant.
30. One of the anticipated outcomes of the Act is a reduction in the approval times for building applications. The specified timeframes for processing applications are considered tight and will require local governments to perform at their most efficient level.
31. Council is requested to approve the following new delegations as provided under the following sections of the Act (refer Attachment 2):
- Section 20 Approve or refuse a Building Permit
 - Section 21 Approve or refuse a Demolition Permit
 - Section 22 Further grounds for refusing to grant a Building or Demolition Permit
 - Section 58 Issue of Occupancy Permit and Building Approval Certificate
 - Section 65 Consider Extending the period of duration of a Occupancy Permit or Building Approval Certificate
 - Section 110 Issue Building Orders
 - Section 117 Revoke Building Orders
 - Section 139 Authority to commence prosecutions
32. Under the provisions of the Act, local governments will be provided with the authority to ensure that all building works comply with the requirements of the issued building or demolition permit, the Building Code of Australia and all relevant standards.
33. A Permit Authority may take enforcement action if building work:

- Contravenes a building, demolition or occupancy permit;
- Is used in contravention of the Act or Regulations;
- Is unfit for use or occupancy; or
- Is a danger to the occupants.

34. To ensure good governance in building control and to enable the City to effectively and efficiently fulfil its obligations under the Act it is necessary to delegate the authority to appoint authorised officers for the purposes of the Act to the Chief Executive Officer (refer Attachment 2).

GOVERNMENT CONSULTATION

35. Building team officers have undertaken informal consultation with Building Commission staff and other local governments to develop the proposed approach to implementing the new Building Act and other new legislation.

PUBLIC CONSULTATION / ENGAGEMENT

36. Consultation regarding the implementation of the new Building Act and how it affects the Western Australian building industry is the responsibility of the Building Commission.

37. The proposed fee structure will be advertised in the local press as required by section 6.19 of the *Local Government Act 1995*.

38. If adopted, builders within the City of Albany area will be advised of the services to be offered by the City and the fee for the service.

STATUTORY IMPLICATIONS

39. The following sections of the *Local Government Act 1995* have been considered:

“6.12. Power to defer, grant discounts, waive or write off debts

- (1) *Subject to subsection (2) and any other written law, a local government may —*
- (a) *when adopting the annual budget, grant* a discount or other incentive for the early payment of any amount of money;*
 - (b) *wave or grant concessions in relation to any amount of money; or*
 - (c) *write off any amount of money,*

which is owed to the local government.

** Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*
- (4) *Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.”*

“6.16. Imposition of fees and charges

- (1) *A local government may impose* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*
 - * Absolute majority required.
- (2) *A fee or charge may be imposed for the following —*
 - (a) *providing the use of, or allowing admission to, any property or facility wholly or partly owned, control managed or maintained by the local government;*
 - (b) *supplying a service or carrying out work at the request of a person;*
 - (c) *subject to section 5.94, providing information from government records;*
 - (d) *receiving an application for approval, granting an approval, making an inspection and issuing a licence permit, authorisation or certificate;*
 - (e) *supplying goods;*
 - (f) *such other service as may be prescribed.*
- (3) *Fees and charges are to be imposed when adopting the annual budget but may be —*
 - (a) *imposed* during a financial year; and*
 - (b) *amended* from time to time during a financial year.”*

“6.17. Setting level of fees and charges

- (1) *In determining the amount of a fee or charge for a service or for goods a local government is required to take into consideration the following factors —*
 - (a) *the cost to the local government of providing the service or goods;*
 - (b) *the importance of the service or goods to the community; and*
 - (c) *the price at which the service or goods could be provided by an alternative provider.*
- (2) *A higher fee or charge or additional fee or charge may be imposed for an expedited service or supply of goods if it is requested that the service or goods be provided urgently.*
- (3) *The basis for determining a fee or charge is not to be limited to the cost of providing the service or goods other than a service —*
 - (a) *under section 5.96;*
 - (b) *under section 6.16(2)(d); or*
 - (c) *prescribed under section 6.16(2)(f), where the regulation prescribing the service also specifies that such a limit is to apply to the fee or charge for the service.*
- (4) *Regulations may —*
 - (a) *prohibit the imposition of a fee or charge in prescribed circumstances; or*
 - (b) *limit the amount of a fee or charge in prescribed circumstances.”*

“6.19. Local government to give notice of fees and charges

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

- (a) *its intention to do so; and*
- (b) *the date from which it is proposed the fees or charges will be imposed.”*

STRATEGIC IMPLICATIONS

40. This item relates to the following elements from the City of Albany Strategic Plan (2011-2021):

Key Focus Area:

Organisational Performance

Community Priority

Policy and procedures

Proposed Strategies

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

POLICY IMPLICATIONS

42. There are no policy implications associated with this item.

RISK IDENTIFICATION & MITIGATION

43. The risk identification and categorisation relies on the City's Risk Management Framework.

| Risk | (L) | (C) | Risk Rating | Mitigation |
|---|------------|------------|--------------------|-----------------------------------|
| <i>Proposed fee schedule is not adopted.</i> | Possible | Medium | High | Adopt the proposed fee schedule. |
| <i>Proposed delegations are not adopted</i> | Possible. | Medium | High | Adopt the proposed delegations |
| <i>Proposed authorisations are not adopted.</i> | Possible | Medium | High | Adopt the proposed authorisations |

FINANCIAL IMPLICATIONS

44. While local governments will receive legislated fees for their new responsibilities, it is anticipated that the amount of revenue local government receives from the building approval service may decrease. With the introduction of private certification, local government will no longer have the exclusive right to assess building licence applications, which will impact on the revenue currently received from building approval fees and charges. The effect of the proposed changes on income will not be known for approximately 12 to 18 months.

LEGAL IMPLICATIONS

45. Without the delegations and authorisations in place by the proclamation of the Act, the City's Building Surveyors will be restricted in their ability to assess building applications.

ALTERNATE OPTIONS

46. With the introduction of the Act, Council has two options available regarding the service to be provided to the community:

(a) Provide the minimum service as specified by the Act:

- Issue prescribed permits (Permit Authority)
- Ensure building works within the district achieve statutory compliance
- Undertake assessment and issue Certificate of Design Compliance for Class 1 (single dwellings) and Class 10 (sheds & patios) buildings.

or

(b) In addition to the minimum service, Council can resolve to provide a certification service for Class 2 to 9 buildings, for buildings within the City of Albany district, which will essentially be a continuation of the building assessment role that is currently undertaken by local governments.

SUMMARY CONCLUSION

47. That Council consider the proposal for the City of Albany to provide a building certification service in accordance with the Act and adopt the proposed schedule of fees and charges.

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| Consulted References | <i>Building Act 2011</i> |
| File Number (Name of Ward) | All Wards |
| Previous Reference | Nil |