

## 1.20 Right-of-Way Closure

### Purpose

The purpose of this policy is to:

1. State the matters that Council is required to take into consideration when assessing requests to close rights-of-ways; and
2. Ensure that Council's policy is integrated with the policies of the Western Australian Planning Commission and the Department of Land Administration, both of which are involved in right-of-way closure requests.

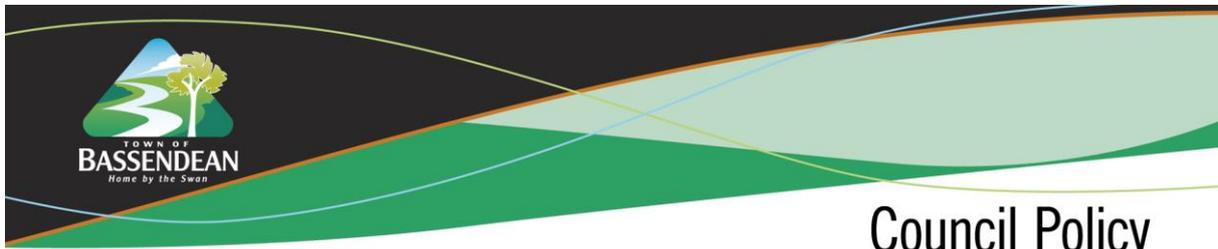
### Background

The Town of Bassendean originally contained 24 rights-of-way that were created to provide access to the rear of adjoining properties. They also facilitated the servicing of backyard toilets, the delivery of solid fuels and the provision of other essential services.

The majority of rights-of-way were created as part of the original subdivision of the surrounding properties, and are in private ownership. They are not owned or controlled by the Town. They are private rather than public streets, and generally may only be legitimately used by the landowners of adjoining properties. The original subdividers of the land owned many of the rights-of-way and these companies no longer exist.

Advantages of retaining rights-of-way include:

- \* They provide an alternative convenient access to properties, especially those properties fronting important regional roads;
- \* They may contain public utility infrastructure;
- \* They have the potential to allow carports and garages to be provided at the rear of the properties that can lead to improved streetscapes; and
- \* They could have the potential in the future to be used to facilitate the development of infill dwellings at the rear of existing residences, which utilises the right-of-way as their sole vehicular access to the dedicated street network.



On occasions, the Town is asked to close rights-of-way. Reasons for the requests include:

- \* They are no longer required to give access to adjoining properties;
- \* They are poorly maintained;
- \* They are used for illegal dumping;
- \* They give unwanted access to the rear of properties and are used for anti-social/criminal behaviour; and
- \* To increase the area or development potential of adjoining properties.

Often adjoining property owners cannot agree on whether or not a right-of-way should be closed.

The closure of rights-of-way or more properly private streets is governed by the *Land Administration Act 1997* and involves the Town of Bassendean, the Western Australian Planning Commission, and the Department of Land Administration.

## **Application**

This policy applies to all requests to close rights-of-way within the Town of Bassendean.

## **Relationship to the Western Australian Planning Commission and the Department of Land Administration Policies**

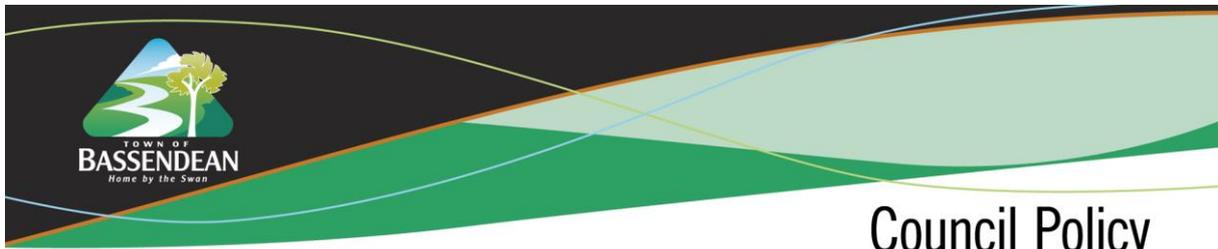
This policy is consistent with Western Australian Planning Commission and the Department of Land Administration policies on the closure of right-of-way

## **Objectives**

The objective of this policy is to ensure that consideration is given to both the short-term and long-term impacts of right-of-way closure requests.

## **Principles**

Closure of a right-of-way shall not proceed generally where:

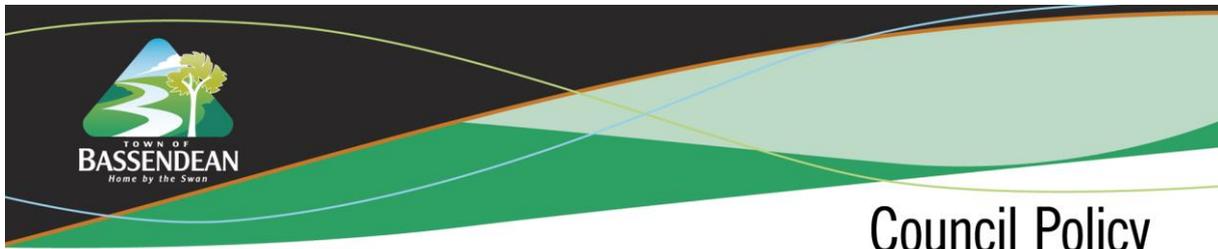


- \* safe rear access is provided by the right-of-way to properties on Important Regional Roads;
- \* the right-of-way is clearly used for access to small lots with limited street frontage;
- \* the right-of-way is constructed;
- \* the right-of-way provides the only means of access to an approved garage or carport;
- \* the right-of-way has the potential either now or in the future to be used to facilitate the development of infill dwellings at the rear of existing residences;
- \* agreement cannot be reached for the acquisition and inclusion of the subject land into adjoining properties;
- \* arrangements have not been made to protect or relocate any public services located within the right-of-way;
- \* reasonable objections by adjacent property owners and owners and residents of properties served by the right-of-way have not been satisfactorily addressed; and
- \* relevant transport and planning considerations have not been taken into account and issues raised by Department for Planning and Infrastructure and other relevant government departments have not been properly considered.

In addition to the above, closure of a right-of-way shall not proceed without:

- \* referral to, and preliminary agreement by, the Department for Planning and Infrastructure;
- \* referral to service agencies; and
- \* A resolution from Council recommending closure.

Amalgamations of Crown land with adjacent freehold properties must be effected by subdivisional plan, which requires approval by the Western Australian Planning Commission. Where the Commission opposes amalgamation, closure cannot proceed.



As a general principle, each adjoining landowner should have an opportunity to share equally in the land in a closed right-of-way. This principle does not apply where services requiring easements dictate unequal land allocations for good planning reasons.

## **Policy Provisions**

### **Preliminary Assessment**

Each request to initiate closure action of a right-of-way shall be reported to Council to enable the Council to decide whether the request should be supported and to allocate a work priority to that request. As part of this assessment Council officers will provide an initial assessment against the policy principles contained with this policy.

## **THE CLOSURE PROCESS**

### **Consultation with Adjoining Landowners**

Where Council decides that a request to initiate closure action of a right-of-way should be progressed, Council officers will carry out consultation with adjoining owners in accordance with the Land Administration Act 1997.

### **Department for Planning & Infrastructure Referral**

Council will provide the Department for Planning & Infrastructure with a copy of the initial assessment. Where there is objection from the Department, a report shall be presented to Council for consideration to seek advice as to whether Council should ask for the matter to be reviewed by the Western Australian Planning Commission.

It should be noted that where the approval of the Commission cannot be obtained, the closure cannot proceed.

### **Other Referrals**

Comments will be sought from other relevant public authorities and service agencies with regard to service relocation and easement requirements.

## **Purchase and Disposal Arrangements**

During the preliminary stages, Council staff will request Department of Land Administration to provide an upfront conditional purchase price based on market values in the absence of service relocation or easement costs, so that the adjoining landowners can be informed as soon as possible. The purchase price may be reduced depending on the impact of any easements or costs to relocate services.

## **Town of Bassendean's Considerations**

In forming its view on a proposed closure; Council will have due regard to:

- a) the objectives, policy principles and policy provisions of this policy; and
- b) the advice of relevant public authorities and parties, including the Department for Planning & Infrastructure.

## **Administration Fee**

Council will charge the applicant a deposit, which will be used to meet closure costs incurred by Council and must be paid prior to Council carrying out its initial assessment.

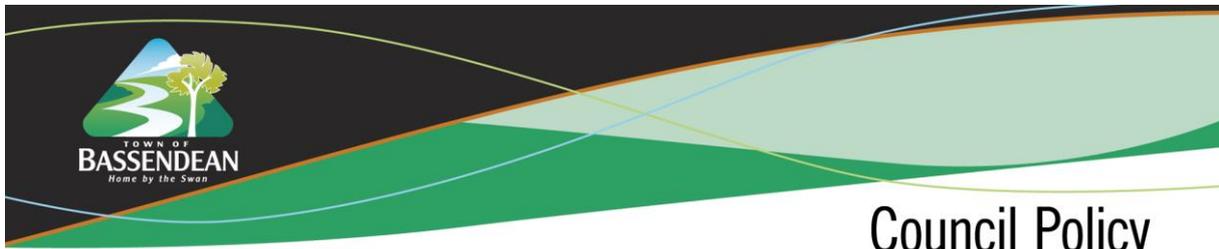
Expenses over and above the deposit will be invoiced to the applicant and must be paid prior to Council's final resolution for closure. Any unused monies shall be returned to the applicant.

The amount of the deposit is included in Council's Schedule of Fees and Charges and shall be reviewed annually and updated in relation to the CPI, if necessary.

## **Application Procedure**

The applicant shall provide:

1. A statement from the majority of landowners adjoining the right-of-way indicating that they support the right-of-way being closed;
2. A statement from the landowners adjoining the right-of-way indicating that they agree with the proposed land distribution and agree to meet the costs of acquisition, including any relocation of services; and
3. The administration fee.



Note: Where a number of owners will benefit from the closure of a right-of-way, division of costs must be privately agreed between all parties.

### **Advice to the Department of Land Administration and Finalisation of Closure**

Council shall confirm its recommendation to the Department of Land Administration. Where Council's recommendation is to support the closure request the Department will finalise the matter with the affected landowners.

### **Advice to Adjoining Landowners**

Council will advise the adjoining landowners by letter of its recommendation to the Department of Land Administration in relation to closure, including the reasons for its recommendation.

## **Application**

Responsibility for the implementation of this policy rests with the Mayor, Councillors, Council delegates and Chief Executive Officer. The Policy is to be reviewed every three years.

<p><b>Policy Type:</b> Strategic Policy</p> <p><b>Link to Strategic Community Plan:</b> Town Planning and Built Environment</p>	<p><b>Responsible Officer:</b> Chief Executive Officer and Manager Development Services</p> <p><b>Last Reviewed: March 2014</b> <b>Version 2</b> <b>Next Review due by:</b> December 2016</p>
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