	Function: DEVELOPMENT SERVICES (PLANNING)	Adopted: 1 st June 2016 Resolution No.: C145:0616
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	Version Number: 2	Next Review: As Required
LAND MANAGEMENT AGREEMENT AND ENCUMBRANCES POLICY		

Policy Statement

1. Introduction

- 1.1. The purpose of the Land Management Agreement and Encumbrances Policy (Policy) is to provide a framework for matters relating to the administration of Land Management Agreements (LMA) and encumbrances, where Council is a party to the agreements.
- 1.2. This Policy provides guidance in relation to the creation of both LMAs and encumbrances and to administration requirements.

2. Scope

- 2.1. The objectives of the Policy are to:
 - 2.1.1. Allow Council officers to approve or refuse requests to waive certain requirements of a LMA and encumbrances under delegation.
 - 2.1.2. Provide guidance to landowners who may consider to put in a request to waive a requirement of a LMA and encumbrances.
 - 2.1.3. Ensure consistency in the consideration and assessment of requests to waive certain requirements of a LMA and encumbrances.
 - 2.1.4. To ensure consistency in the assessment of Development Applications and interpretation of LMAs and encumbrances.
- 2.2. Council does not generally support or encourage the creation of LMAs or encumbrances and will only enter into an agreement in exceptional circumstances. Council may choose to be a party to an:
 - 2.2.1. Encumbrance formed pursuant to the Real Property Act 1886.
 - 2.2.2. LMA formed pursuant to, and for the purposes outlined, in Sections 57(2) and 57A of the Development Act, or Section 192 of the Planning Development and Infrastructure Act 2016.
- 2.3. LMAs and encumbrances may also be appropriately used for other matters unrelated to a development application, including instances relating to the development, management, preservation and conservation of land, including Council land.
- 2.4. Council will not consider entering into an encumbrance (either individual or common building scheme), unless there are valid reasons supported by an applicant's legal advice.

- 2.5. Section 33 of the Development Act and Section 102 of the Planning Development and Infrastructure Act 2016 require the designated authority to assess development applications for planning consent against the relevant provisions of Council's Development Plan or the Planning Rules. Section 30 of the Development Act requires Council to regularly review the contents of its Development Plan or Planning and Design Code to ensure it is consistent with the strategic direction contained in the Planning Strategy for South Australia and State Planning Policies, and Section 64 of the Planning Development and Infrastructure Act 2016 requires the Commission to prepare and maintain the Planning and Design Code for the purpose of assessing against the Planning Rules. The Development Plan is therefore a living document and LMAs must not be created where their provisions are or may (in the future) be inconsistent with the provisions of the Development Plan or the Planning and Design Code. Such instances include:
- 2.5.1. To justify the approval of a development application which would otherwise not comply with the provisions of Council's Development Plan or the Planning and Design Code.
 - 2.5.2. To circumvent changes to Council's Development Plan or the Planning and Design Code.
 - 2.5.3. Where the LMA is contrary to the intent of Council's Development Plan or the Planning and Design Code, or any policies contained therein.
 - 2.5.4. To control the future development of land, which may otherwise be controlled by Council's Development Plan or the Planning and Design Code, or conditions attached to consents.
- 2.6. LMAs must not reiterate planning provisions already contained in Council's Development Plan or the Planning and Design Code.
- 2.7. LMAs may only be entered into when all persons with a legal interest in the land consent to the creation of a LMA of their own free will. The use of a LMA may be proposed by any party with an interest in the land. However, although the use of a LMA may be recommended by Council, its use as a tool for the effective management of land cannot insisted upon by Council (e.g. a development authorisation cannot be conditional upon the creation of an LMA).
- 2.8. Unless there are valid reasons supported by the applicant's legal advice, Council will not consider entering into an encumbrance (either individual or common building scheme).
- 2.9. Where a land owner initiates the discharge of an LMA or an encumbrance, and the LMA or encumbrance is no longer required, any Council support for the discharge will be subject to all costs being borne by the land owner.
- 2.10. Under Sections 57 and 57A of the Development Act 1993 and Sections 192 and 193 of the Planning Design and Infrastructure Act 2016, a Council may enter into a Land Management Agreement (LMA) with the owner of land. When development authorisation is sought for a land division or multiple units and a LMA is registered against the land that is the subject of the development application, then the provisions of the LMA applies to all the subsequent newly created allotments and/or units.

- 2.11. The LMA is a contractual agreement between a land owner and the Council and is registered against the title of all new allotments (or units) created as part of the development authorisation. A LMA is therefore binding on all successors in title, whether or not they were an initial party to the agreement. Council, at the written request by the owner, may decide to waive a requirement of a LMA. Council cannot, however, agree to the removal of, or the amendment to a LMA without the consent of all the parties that are bound by the provisions of the LMA.
- 2.12. Council, from time to time, consents to the waiving of specific requirements under circumstances deemed reasonable and where the proposal will not undermine the intent of the LMA or the State Planning Policies. Typical scenarios where positive consideration may be given to a request to waive a certain requirement of a LMA may include, but are not limited to the following:
- 2.12.1. Some LMAs are prescriptive in terms of the building materials that may be used in a development. New building products are developed over time that will have the same effect and impact compared to the building materials specified in the LMA. To allow the use of modern, technologically advanced products that will have the same effect as building materials prescribed by the LMA, some prohibitive provisions in the LMA may have to be waived.
- 2.12.2. LMAs are generally formulated at the time when allotments are vacant and it often protects development rights of these properties or the impact from developments that may occur on adjoining properties. Once the vacant allotments are developed, circumstances may change and the provisions put in place in the LMA to protect the developed allotment may no longer be required.
- 2.12.3. Although development parameters covered by a Development Plan or the Planning and Design Code should not be duplicated in a LMA, such practice was not uncommon in the past to ensure consistency with the Development Plan of the day. Development Plans change over time which, in some instances, resulted in the LMA to be at odds with the Development Plan. To allow development in accordance with the later versions of the Development Plan some prohibitive provisions in the LMA may have to be waived.

3. Applicable Legislation

- 3.1. The following legalisation applies to this Policy:
- Development Act 1993
 - Development Regulations 2008
 - Planning, Development and Infrastructure Act 2016
 - Planning, Development and Infrastructure (General) Regulations 2017
 - Real Property Act 1886
- 3.2. This Policy is not a mandatory requirement but essential for good governance.

4. Integration with Corporate Objectives

4.1. This Policy supports Council's Strategic Plan 2019 - 2029

4.1.1. Environmental Objective – Sustainability

Goal 2 - To responsibly manage the natural and built environment to ensure its sustainability and diversity to the community.

- 2.1 Planning – To establish and implement planning and development policies in accordance with legislation, economic and community demand.

5. Related Council Policies and Documents

5.1. This Policy is also designed operate in conjunction with other policies, including:

- Development Plan of the Copper Coast Council

6. Definitions

For the purposes of this Policy, the following definitions apply:

- 6.1. **Authorised Officer** is defined as an Authorised person delegated authority under Section 44 of the Local Government Act 1999.
- 6.2. **Chief Executive Officer (CEO)** means the appointed Chief Executive Officer under Section 96 of the Local Government Act 1999 and includes any person acting or delegated by the Chief Executive Officer's under Sections 100 and 101 of the Local Government Act 1999.
- 6.3. **Council** means the Copper Coast Council and any delegate of the Council.
- 6.4. **Land Management Agreement (LMA)** is an agreement between two or more parties, registered against the land and noted on the Certificate of Title. An LMA is still applicable to the new owner upon transfer of a title into another owner's name.
- 6.5. **Public Officer** means a member, employee, volunteer or, contractor authorised to perform work on behalf of Council.
- 6.6. **Request to waive a requirement of an LMA** means a written request to Council by the owner of the property to which the LMA applies.
- 6.7. **State Planning Policies** – State Planning Policies are the highest order policy document in South Australia's planning system. They outline the matters of importance of the state in land use planning and development and provide a policy environment aimed at enhancing our liveability, sustainability and prosperity.
- 6.8. **Structure** means any constructed wall or structure similar in nature intended to serve as a retaining wall or constructed for any other purpose where the height of the wall or similar structure exceeds a vertical height of 1.0 metres, requiring Engineering Design.

7. Application

7.1. The application of this Policy is dealt with under the following topics:

7.1.1. General Considerations

7.1.2. Considerations specific to the LMAs applicable to the Wallaroo Marina.

7.2. General Considerations

7.2.1. In accordance with this Policy Council authorises the Chief Executive Officer or the Director Development Services or any person acting in any one of these positions to exercise discretion to:

7.2.1.1. Waive certain requirements of LMAs or an encumbrance upon receipt of a written request where such request will not:

- a) undermine the intent of the LMA or encumbrance; and
- b) undermine the intent of the Development Plan or Planning and Design Code; and
- c) have an adverse impact on adjoining properties; and
- d) detract from the amenity of the locality in which the subject property is located over the long term; and
- e) result in non-compliance with the Building Code of Australia.

7.2.1.2. Refuse the request to waive the requirements of a LMA or encumbrance when considered inappropriate.

7.3. Considerations specific to the LMAs applicable to the Wallaroo Marina

7.3.1. Due to the development history of the Wallaroo Marina there are a number of LMAs registered over various areas within the Marina. Some of these LMAs are almost identical with some minor variations. Some of the provisions consistent throughout these LMAs prevent the erection of a structure within 8 metres measured from the landward side of the revetment wall in the Wallaroo Marina.

7.3.2. In accordance with this Policy, Council authorises the Chief Executive Officer or the Director Development Services or any person acting in any one of these positions to exercise discretion to:

7.3.2.1. Waive the requirements of the applicable LMA that prevents the erection of a structure within 8 metres measured from the landward side of the revetment wall if all of the following requirements are met:

- a) where it is demonstrated that the proposed structure is at, or below the same level of the natural profile of the land prior to development of the subject allotment so that it does not impact on the views from the adjoining properties over the waterway; and
- b) where it is demonstrated that the proposed structure will not impact on the privacy of the adjoining allotments; and
- c) where it is demonstrated that the proposed structure will not undermine the intent of the LMA in any way; and
- d) where it is demonstrated that the proposed structure will not undermine the intent of the Development Plan.

7.3.3. Refuse the request to waive the requirements of the applicable LMA when considered inappropriate.

8. Complaints

- 8.1. Complaints under this Policy must be in writing to the Chief Executive Officer and lodged in accordance with Council’s Complaints Policy.
- 8.2. Any breaches under the Council Employee Code of Conduct will require evidence to support the allegation(s).
- 8.3. In the case of a complaint against the Chief Executive Officer, complaints must be in writing to the Mayor and will require evidence to support the allegation(s).
- 8.4. Complaints about this Policy can be made in writing to the Governance Officer. These complaints will be managed in accordance with Council’s Complaints Policy.

9. Council Delegation

- 9.1. Pursuant to Section 44 of the Local Government Act 1999, Council delegates to the Chief Executive Officer authority to administer Council’s policies.
- 9.2. This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council’s scheme of delegations.
- 9.3. In terms of this Policy, any waiver or refusal to waive any provision of any LMA or encumbrance in accordance with the provisions of this Policy shall be at the discretion of the Chief Executive Officer on the advice of the Director Development Services and shall be properly recorded on file the Chief Executive Officer sub delegates to the Director Development Services.

10. Adoption and Review


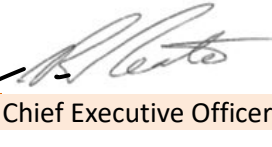
- 10.1. This Policy shall be reviewed every four (4) years, or more frequently, if legislation or Council requires by the Development Services Department and a report shall provide to Council for consideration and adoption.

11. Records Management

- 11.1. Official records will be managed in accordance with Council’s Records Management Policy pursuant to Section 125 of the Local Government Act 1999.

12. Availability of Policy

- 12.1. Policies will be available for inspection without charge at Council’s Principal Office and on Council’s website www.coppercoast.sa.gov.au.
- 12.2. A copy of this Policy may be obtained on payment of a fee in accordance with Council’s Schedule of Fees and Charges.

Signed	 
	Mayor Chief Executive Officer
Date	1st June 2022

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