

13.2 Investigation of a verge bond system

Location	Town-wide
Reporting officer	Principal Design and Traffic Coordinator
Responsible officer	Manager Technical Services
Voting requirement	Simple majority
Attachments	Nil

Recommendation

That Council:

1. Notes the findings associated with the potential introduction of a verge bond system.
2. Endorses the Town's preference that no verge bond system be introduced.
3. Endorses the Chief Executive Officer to put in place a more formal mechanism to detail and report on damage to infrastructure which may have occurred due to building or demolition activity for future consideration.

Purpose

To consider the issues involved with the potential introduction of a verge (infrastructure) bond system to protect Council assets, encompassing points that support or detract from its introduction.

In brief

- To date, the Town has not implemented a verge bond system to protect infrastructure assets and has accepted damage that may have occurred to adjacent infrastructure assets from building and demolition activities. A motion to introduce a verge bond system was put forward at the 2021 Annual Meeting of Electors, and a resolution was passed to consider introducing a suitable system.
- Following the review, the Town officers do not recommend introducing a verge bond system. The introduction of such a system potentially provides the Town with some leverage over building and demolition companies to take better care of infrastructure assets. However, it is felt that this is outweighed by the difficulty in establishing the liability for damages and the administrative burden placed on the Town, exacerbated by the lack of dedicated internal staffing and resources, which leads to the need to introduce fees; supported by a review of other local government operations which provide results which are inconsistent in terms of effectiveness. It is also not recommended on the basis that it adds a further administrative burden on building and demolition companies which are currently facing significant difficulties in resourcing their activities (and is likely to add cost imposts on property owners)
- It is, however, proposed to adopt a more formal mechanism to monitor potential damage incurred from building and demolition activity and reconsider its stance if deemed necessary. This may include separate consideration of a verge bond specifically for high-value trees.
- Council's endorsement for the Town's recommended approach is sought in this item.

Background

1. The option to introduce a verge bond system has recently been put forward in the annual meeting of electors, and a resolution was passed to consider the introduction of a suitable system.

2. The resolution from the 28 July 2021 annual electors meeting was *"That the Town seriously consider imposing a levy on builders when they put an application in to build a building in the Town for the remuneration to be paid to the Town for the damage they do to Town infrastructure whilst the building is going on, and for the Town to inspect construction sites during construction periodically."*
3. At the ordinary Council meeting of 21 September 2021, the resolutions from the Annual Meeting of Electors were considered further. Resolution 6 from the Annual Meeting of Electors (relating to the potential levy) resulted in the following proposed Council action: *"That Council approves the Chief Executive Officer to investigate administrative compliance improvement opportunities such as the potential realignment of certain positions within the organisational structure and report back on findings to the February 2022 Ordinary Council Meeting"*. Both the initial Annual Meeting of Electors resolution and the proposed Council action have been incorporated into the final Council Resolution 219/2021.
4. The Town officers initially considered the matter, and a preliminary report on findings was made at the February Agenda Briefing Forum (ABF). The final review is now presented for consideration by Council. The elected members raised several issues at the ABF, and these have been noted in the analysis section of this report.

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	For Council to be seen to be considering perceived lack of recovery of costs for damaged infrastructure resulting from private property building and demolition activities.

Environment	
Strategic outcome	Intended public value outcome or impact
EN02 - A safe, interconnected and well maintained transport network that makes it easy for everyone to get around.	To consider a system to provide protection for infrastructure assets from private property building and demolition activities.

Engagement

Internal engagement	
Technical Services	Previous dealings with builders requiring a bond had resulted in contractors simply increasing their construction charges payable by lot owners who have no direct control over their activities.
Street Operations	Considerable asset damage may have been caused by utility service providers and building contractors.
Street Improvement	Many of the damaged footpaths and kerbs are aged and not designed to handle the load of maintenance trucks for activities such as tree pruning, pipe repairs, cabling repairs.
Place Planning (UFS)	Tree protection bonds will require further investigation.

External engagement	
Stakeholders	Compliance Officers of various local governments including Cities of Bayswater, Gosnells, Wanneroo, Joondalup, Canning, South Perth and the Town of Bassendean.
Period of engagement	Between 1 June 2020 and 24 December 2021
Level of engagement	Consult
Method	Face to face and phone conversations.
Advertising	N/A
Submission summary	N/A
Key findings	A number of these local governments do not have a verge bond system in place and the compliance officers provided mixed messages regarding the effectiveness of such a system.

Other engagement	
WALGA	Refer to the 2020 version of Code of Practice for Utility Service Providers-Restoration. The Town's staff were co-authors of this document.

Legal compliance

[Fees in accordance with *Local Government Act 1995*, section 6.16](#)

[Town of Victoria Park Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000](#)

Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Not adopting a verge bond system for building and demolition activity may result in lack of recovery of infrastructure damage costs from contractors.	Minor	Possible	Moderate	Low	Accept risk by not adopting a verge bond system, noting the significant drawbacks to its introduction; and the added comfort offered through existing bonding arrangements on

						subdivisions, and controls over practices by utilities.
Environmental	Not applicable.				Medium	
Health and safety	Damaged Council assets in the public realm may cause serious injury to members of the public	Major	Possible	High	Low	Treat risk through routine asset condition reviews.
Infrastructure/ ICT systems/ utilities	Not applicable.				Medium	
Legislative compliance	Not applicable.				Low	
Reputation	The verge bond system may be seen to add to existing permit requirements as unnecessary.	Minor	Likely	Moderate	Low	Treat risk by not adopting a verge bond system.
Service delivery	Not applicable.				Medium	

Financial implications

Current budget impact	Sufficient funds exist within the budget to address this recommendation.
Future budget impact	Unless a bonding system is introduced there will be no future budget impacts. If this is to be considered for implementation in the future, the budget impact will need to be identified at that time.

Analysis

5. Before introducing a verge bond system, it is worthwhile to briefly review the existing Town practices regarding works impacting the public thoroughfare.
6. The current practice allows for bonds to be taken concerning the deferral of subdivision requirements (so that clearances can be issued), and major development where the verge is impacted, or the developer is modifying the verge to incorporate significant changes such as parking embayments or major landscaping works. It is considered that the level of non-compliance for requirements in these situations is minimal, given rectification works are required for statutory development approvals. For utilities working in the public thoroughfare, no bonds are taken at the time of work activity. However, the utilities (and their contractors) are required to comply with the Code of Practice for utilities, and

this is generally sufficient to ensure that any damages are properly reinstated to the satisfaction of the Town.

7. The potential introduction of a verge bond system raises several issues that should be addressed. These are canvassed in the following paragraphs.
8. The main purpose of a verge bonding system is to provide an opportunity for the Town to have some leverage over building and demolition companies to take better care of the infrastructure (particularly footpaths) surrounding any private development. Without any leverage, there may be little incentive for less reputable companies to avoid damage to the Town's assets, although it is noted that many companies will want to maintain a good working relationship with the Town and keep their reputation within the building industry.
9. It follows those damages to infrastructure assets from building and demolition activities may be minimised if a higher degree of care is taken. Consequential risks in relation to public liability etc. from damaged assets resulting from these works may therefore be diminished, although it is noted that such risks may also be reduced by the normal asset condition reviews undertaken by the Town.
10. However, there are significant drawbacks against introducing a verge bond system. Two main issues relate to the determination of liability for damages and the administrative burden that is placed on the Town.
11. The determination of liability is a vexed issue, mainly due to the length of time or potential breaks in building or demolition works and the inability of the Town to be present for all significant activities that may affect the infrastructure assets. This liability determination may be helped through such things as pre and post-construction demolition inspections and reports on infrastructure assets, and acknowledgement of site control periods for on-site works. However, there will always be room for argument on the liability for damage unless direct evidence of damage is witnessed.
12. The extent of the damage may also not be assisted when consideration is made of the condition of the Town's infrastructure assets – with some of the Town's concrete kerb and footpaths being aged and having underlying foundational issues such as rotting tree/grass roots, growing tree/grass roots and ant nests. Such assets may be argued to not be designed to handle unpredictable site challenges in building and demolition activity, and the likelihood of damage will be compounded by the dynamic loading of heavy construction or work vehicles.
13. It should be noted that the Town has considered the level of damage from building and demolition activities proven to have been caused by such works within the municipality. Over the past 5 years no contractor working on private properties were successfully proven by the Town to have damaged the Town's assets, these damages were mainly sustained by aged assets and were repaired by the Town at its cost.
14. Based on this review, there has been no successfully recent proven liability for costs of damage against building or demolition contractors for repair works undertaken on adjacent infrastructure assets. While this conclusion is not based on a specific review mechanism that may be envisaged through a verge bond system, the difficulty of liability determination remains as noted above. Such disputes regarding liability may also escalate beyond the officer level of the Town.
15. The second significant issue relates to the administrative burden placed on the Town by introducing a verge bond system. The most obvious resulting costs for this arise through the engagement of operations personnel to monitor, inspect, report and act on the building and demolition activity within the Town. After considering the matter, there is insufficient internal capacity to provide the dedicated resources required to undertake the anticipated role. The extra staffing would therefore need to be engaged externally (and while not unachievable, the current market conditions for external personnel indicate that suitable candidates may not necessarily be attracted to the role).
16. It is estimated that funding in the order of \$120,000 per year will be required to maintain a verge bond system. This covers the cost of a dedicated officer for direct monitoring etc. and other associated indirect finance, records and customer service staffing costs for the administration involved with the system and collection of fees etc.

17. The potential source of funding for these costs can be sought through the imposition of new fees which can be applied for verge infrastructure protection permits to be granted to building and demolition companies for private works (such fees can be levied under section 6.16 of the *Local Government Act 1995* and through the *Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000*). Based on approximately 707 permits issued for building and demolition works in 2020/21 (619 building permits and 88 demolition permits), the fees to be set maybe around \$170 for each verge infrastructure protection permit. Such a fee level is comparable to other local government fees being set for similar works.
18. At the same time as setting the fees applicable to fund the extra costs for the verge bond system the actual verge bond amounts would need to be set and approved. The levels of bonds need to be applied so that the Town has sufficient funding to use in the event of damage occurring to the verge infrastructure assets, and these may vary for individual or grouped dwellings and the dimensions of the verge area likely to be affected. Other local governments have indicated verge bond amounts of \$1,400 to \$4,000 depending on verge size etc.
19. To give some perspective on the verge bond system, it is also noted what additional information was gained in discussions with other local governments on their operation of such a system. This is documented in the final two paragraphs of this Analysis section. In essence, the feedback received indicated that there were inconsistent results with the verge bond system, and its effectiveness may be marginal.
20. In addition, it is noted that from the point of view of the builders and demolition contractors and property owners, the introduction of a verge bond system will place further administration and added costs to the process. While these should be able to be accommodated, this does add to the current difficulties that the building industry faces.
21. In summary, the introduction of a verge bond system may provide some opportunity for the Town to improve its controls over damage occurring to infrastructure assets occurring through private building and demolition activities. However, there are significant drawbacks to the operation of a verge bond system in the difficulty of proof of damage and the extra administrative burden placed on the Town, which can only be funded through additional fees (and bonds). The difficulty of running successful verge bond operations is also highlighted by the results indicated by other local governments on their systems. Combined with the extra administration and costs for building and demolition companies and property owners for verge bond requirements; together with the added comfort of the existing bonding arrangements in place for subdivisions and major developments, as well as the practices of utility providers; the Town does not recommend the introduction of such a system.
22. An alternative system may be available to the Town where verge bonds themselves are not taken and only a formal inspection and reporting system for building and demolition activity is introduced. While this may marginally reduce the administration and costs under the system, this would still require additional resources and extra fees to fund the roles. It is also subject to the same drawbacks as already noted and is not recommended for introduction.
23. While the introduction of a verge bond system is not recommended, it is acknowledged that the levels of damage to the infrastructure assets from building and demolition activity is likely to be higher than indicated from the review of costs proven to be involved. Therefore, it is also recommended that potential damage costs arising from private building and demolition activity be documented on a more formal basis, for consideration if necessary. The documentation should also consider high value assets, such as significant trees, which have not been specifically addressed in this report, but can be considered as a separate aspect.
24. Officers investigated what compliance officers have done in other Local Governments in respect of the effectiveness of a verge bonds systems and have received mixed messages from the various Councils contacted. In summary, the two main opposing conclusions are:

- a. The verge bond system seems to have encouraged contractors to be more careful when undertaking works affecting the road and verge. It is thought that if the bond system is not in place, there may have been more damage done by contractors. So, the staff time spent on managing the verge bond system is worth it. Unfortunately, there is no evidence made available to the Town to verify this claim.
 - b. The verge bond system takes up a lot of officer time to manage. The bond administration fee received was only enough to cover the cost of administration and not the cost associated with site inspections and meetings with contractors. Hence the verge bond system does not seem to be worthwhile
 - c. Note that most of the damage caused to the Town's assets were due to works undertaken by public utility service providers (Western Power, Water Corporations, etc) and these organisations and their contractors have generally been quite professional in undertaking reinstatement works associated with council assets especially if prompted by compliance officers.
25. There does not seem to be any major difference between the processes of the various councils. However, the way that each council interacted with contractors seems to have produced different outcomes. The councils that seem to find it easy to manage the verge bond system would basically stop pursuing with penalising the suspected contractors who dared to continue to challenge the findings of the compliance officers. These councils would generally treat these cases as either being inclusive or lacking key evidence. It is noted that there is a higher chance of owner builders challenging the compliance officers while contractors were keener to part with the bond money or charge the lot owners to undertake the repairs. There is also a tendency that those compliance officers with lesser experience are more likely to perceive the system effective while those officers with many years of experience tend to be less enthusiastic about the system.

Relevant documents

Not applicable.

Further consideration

26. The following information was requested at the Agenda Briefing Forum held on 5 April 2022.
27. *Information on cost of installing cameras at building sites for an extended period of time and storing data.*

Officers have received a preliminary cost indication of \$32/day for the hire of CCTV (Site Sentry) cameras for site observation. This is based upon a minimum three-month hire period. Setup costs of approximately \$1,000 will also need to be factored in for each installation. Costs for damage will be covered in the daily rate, however, substantial extra costs will be incurred for officer time in reviewing footage etc. At this stage the costs of storing data have not been determined. For a six-month hire period at a single location, this equates to approximately \$7,000, excluding data retrieval and review. Note that if the home construction works continued for a period of 18 months to 3 years, the total hiring cost has been estimated to be between \$17,500 and \$35,000.

Other considerations also come into play. Cameras may not be able to capture the verge area on the far side of vehicles crossing the verge; night vision may be impacted by low resolution; and the

formation of cracks on footpaths and kerbs as heavy vehicles mount over them are not always possible to be captured due to the distance and angle of the camera mounting.

Without the relevant local laws enacted, the Town's current building application processes do not have the ability to impose conditions to charge the abovementioned non-refundable costs to the affected lead builder or contractor. From experience, it is likely that any such charge incurred by the builder/contractor would be passed on to the lot owner or developer even though this charge is intended to mitigate the builder's/contractor's actions.

Based on the costs of operation and monitoring, together with the other factors as noted, it is not considered worthwhile to engage CCTV cameras to monitor building construction and demolition activities.