

ITEM NUMBER: 18.4

CONFIDENTIAL REPORT

VERGE MANAGEMENT - ARTIFICIAL TURF – UPDATE (Report No: 286/20)

Pursuant to Section 90(2) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- h. legal advice.**

Recommendation – Exclusion of the Public – Section 90(3)(h) Order

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 286/20 Verge Management - Artificial Turf – Update Report in confidence.

 - 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 286/20 Verge Management - Artificial Turf – Update on the following grounds:
 - h.** pursuant to Section 90(3)(h) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is legal advice provided by HWL Ebsworth.

 - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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CONFIDENTIAL

Item No: **18.4**

Subject: **VERGE MANAGEMENT - ARTIFICIAL TURF - UPDATE**

Date: 27 October 2020

Written By: Field Services Manager

General Manager: City Assets and Services, Mr H Lacy

SUMMARY

The purpose of this report is to report the findings of an audit of artificial turf installations on Council verges and to seek endorsement of a process to enable Administration to manage artificial turf installations on Council verges.

RECOMMENDATION

1. **That Council:**
 - a) **note the findings of the 2020 audit of artificial turf installations on Council verges;**
 - b) **authorise the development and implementation of a public information campaign to inform the community of Council's Verge Management Policy, associated Section 221 approval requirements under the *Local Government Act 1999* the current ban on new artificial turf installations on verges and to explain how residents should manage existing artificial turf installations when they reach the end of their service life;**
 - c) **endorse the proposed Option 1 for management of Artificial Turf installations;**
 - d) **note the proposed ongoing monitoring arrangements for artificial turf installations;**
and
 - e) **note the current Verge Management Policy and procedures will be updated to reflect endorsed changes and revised process including centralised processing of Section 221 applications within the Planning and Development Team.**

RETAIN IN CONFIDENCE - Section 91(7) Order

2. **That having considered Agenda Item 18.4 Verge Management - Artificial Turf – Update Report No: 286/20 in confidence under Section 90(2) and (3)(h) of the *Local Government***

Act 1999, the Council, pursuant to Section 91(7) of that Act orders that the Agenda Item 18.4 Verge Management - Artificial Turf – Update Report No: 286/20 be retained in confidence for a period of 12 months and/or the Chief Executive Officer is authorised to release the documents.

COMMUNITY PLAN

Placemaking: Creating lively and safe places

Placemaking: Developing walkable connected neighbourhoods

Placemaking: Building character and celebrating history

Community: Building a healthy, active and resilient community

Community: Providing welcoming and accessible facilities

Community: Fostering an engaged and contributing community

Environment: Protecting Biodiversity

Environment: Building an environmentally resilient city

Environment: Using resource efficiently

Environment: Fostering an environmentally connected community

COUNCIL POLICY

Verge Management Policy.

STATUTORY PROVISIONS

Local Government Act 1999

BACKGROUND

In May 2015, the Verge Management Policy was approved for implementation as previous to this, there was no Policy adopted by Council. The initial Verge Management Policy presented to Council allowed Artificial Turf installations on Council verges, however as a condition of approval, it was removed and become silent within the Policy.

At its meeting on 13 August 2019, Council resolved to prohibit the installation of Artificial Turf on Council verges. Whilst Artificial Turf is now listed as a non-permitted surface within the Verge Management Policy, there is still a need to communicate with the residents about the ban and the requirement to apply to Council to alter the verge as per Section 221 of the *Local Government Act 1999* (S221 Approval).

Subsequent to the meeting on 13 August 2019 and the ban on artificial turf being approved, Council considered a Motion on Notice at its meeting on 27 August 2019 with the following being resolved:

1. *That any redevelopment of currently approved synthetic turf on verges be remediated in accordance with Council's newly adopted Verge Policy under Council supervision and at ratepayer's expense.*
2. *That an inspection process for the identification of synthetic turf installed without Council approval is undertaken over time.*
3. *That administration prepare a report outlining options for dealing with current unapproved installations of synthetic turf on council verges and propose any recommended changes to the verge management policy.*
4. *That the CEO arrange to have a progressive inspection program of currently approved synthetic turf installations on Council verges, in regards to their condition and any detrimental effects that the synthetic turf is having on Council trees and plantings in the verge.*

REPORT

Updated Verge Management Policy

The updated Verge Management Policy, including Artificial Turf as a Non-Permitted surface, was placed on Council's website on 19 September 2019. The Policy set out the requirements for property owners to obtain Council's approval under Section 221 of the *Local Government Act* prior to making any alteration to a verge. The current policy is presented in Attachment 1.

Refer Attachment 1

Artificial Turf Audit

Based on Council's resolution, an initial Council wide audit was completed in 2019 to identify properties with verges where Artificial Turf had been installed. This audit was undertaken initially by consultant IMG in conjunction with data capture for Council's Asset Management Plans. This initial audit collected data from cameras mounted on quad bikes, digital street photography (Google Street View) and aerial photos. This work was provided as a "value add service" by the consultant at no charge to Council. However on-ground quality control checks undertaken by Council staff indicated a poor accuracy rate.

Therefore, a further ground audit was undertaken in early 2020 (2020 Audit) by walking all streets and recording specific installation details. Data from this audit has been field verified and is now loaded onto Council's Geographic Information System (GIS).

As a result, 374 locations were identified with artificial turf installed on their verge. Checks of council records indicate that only 6 installations (3 locations) have received formal approval from Council since 2015 when the initial Verge Management Policy was approved.

The remaining 368 installations appear to have been installed without Council approval, although it is unclear how many of them were installed before the implementation of the initial 2015 Verge Management Policy. A copy of the audit findings is presented in Attachment 2.

Refer Attachment 2

It is important to note that installations on private land are not bound by the Verge Management Policy. These are not captured in the 2020 Audit.

The six (6) approved installations were assessed on their individual merits using criteria such as the surrounding environment and existing installations in close proximity prior to the ban on artificial turf being applied on 13 August 2019.

Advice was also sought from Council's arborist to avoid any adverse effects on street trees. Given that the initial 2015 Verge Management Policy was silent on the installation of artificial turf on verges, it was difficult for Administration to deny these applications.

Of the remaining 368 locations, they have either been installed without Council permission or have been installed by Council or a State Government Department. As Council did not undertake verge inspections prior to 2019/2020, it is unclear when these installations occurred and if they pre or post-dated the initial 2015 Verge Management Policy or the 2019 revised Verge Management Policy.

Ongoing Audits

As resolved by Council, regular street verge audits will be implemented to identify artificial turf installations, most likely annually. This is due to the cost and resources required to undertake a detailed street-by-street audit.

A consequence of this approach is that there are likely to be further unapproved installation of artificial turf or possibly removal/renewal of older installations that will potentially occur during the intervening period between audits. This will place pressure on council to have a robust policy position on how to deal with unapproved installations. This is discussed in later section of this report.

Legal Position

The 2020 audit revealed that there were 368 locations with verge alterations which were not approved by Council under s221 of the *Local Government Act*. On this basis, Administration sought legal advice from our lawyers, HWL Ebsworth, as to our ability to direct property owners to remove unapproved artificial turf installed on Council verges using one property as a test case. It was our view, that the advice received could be applied to any other location or form of unapproved landscaping. The legal advice is presented in Attachment 3.

Refer Attachment 3

In summary, HWL Ebsworth indicated that should Council decide to instruct property owners to remove unapproved Artificial Turf installations, Council could be exposed to risk of challenge in

terms of inconsistency, failure to consult and/or failure to properly promote Council's changed policy position. Council will also struggle to rely solely on the updated Verge Management Policy (including the requirements to seek prior approval under s221 of the Local Government Act) unless this information and the updated Verge Management Policy had been widely communicated to residents of the City of Holdfast Bay.

Options for Dealing with Unapproved Installations

1) Information Campaign

As per the recommendation from HWL Ebsworth, the first step in securing Council's Verge Management Policy is an Information Campaign.

The purpose of the campaign is to ensure that Council has properly and fully communicated its position regarding the ban on Artificial Turf and the requirement for owners of properties to apply to obtain Council's approval to alter the verge under s221 of the *Local Government Act*. The information needs to contain:

- a) A clear explanation of approvals needed under s221, how the application process operates, when you must complete an application and instructions on where to access it. Currently, the s221 Application is a form referred to as "Verge Application" and this is available upon request via our counter, through the call centre or via Council's website.
- b) Outline Council's ban on the installation of Artificial Turf on verges by providing information on the Verge Management Policy, including why artificial turf was banned with information on the negative environmental impacts.
- c) Explanation on Council's proposed management plan for historic artificial turf installations (ie installations that pre-date Council's resolution of 27 October 2020) in relation to unapproved installations (refer options below for specific details).
- d) Council's policy position for any unapproved artificial turf installations post council resolution dated 27 October 2020 (refer options below for specific details).

If Council approve the Information Campaign, then our Communications Team will create the required content and distribution plan.

The Information Campaign will need to include information regarding the property owner's responsibility for ongoing maintenance of all verge installations and can include broader messaging on environmental issues.

The Information Campaign would last 3 months which will act as a grace period for those installations pre 27 October 2020. It will be reinforced on a 3 monthly basis thereafter using social media and other media.

2) Options to Manage Artificial Turf Installations

Option 1

- Under this option, unapproved artificial turf installations that existed prior to 27 October 2020 (date council this report and reaffirmed/updated its policy position) would be granted an exemption from removing their unapproved installation.
- Council would issue retrospective s221 approvals, but with conditions.
- The key conditions would be that existing artificial turf installations:
 - cannot be replaced with new Artificial Turf, either at the end of useful life or by way of upgrade and must be replaced with an approved verge treatment compliant with Council's Verge Management Policy at the time.
 - must be maintained in good order and condition, to Council's satisfaction, or they must be replaced with an approved verge treatment compliant with Council's Verge Management Policy at the time.
- Council would also maintain the right to vary any approval, including requiring an owner to remove part of their artificial turf installation and remediate the area with an approved verge treatment compliant with Council's Verge Management Policy at the time, where the original turf installation is determine, at council's sole discretion, to be adversely impacting council's street tree(s) or the condition of the verge.
- Under s221, Council has a right to require the owner of any unapproved artificial turf installation (or any other verge alteration) to modify or remove that installation, including where the installation is believed (at Council's sole discretion) to be adversely impacting council's street tree(s) or the condition of the verge.
- Unapproved installations that are constructed after conclusion of the 3 month information campaign would be subject to a removal order.
- This option aligns with the legal advice from Council's lawyers
- This option would be included in an update Verge Management Policy which would form part of Council's information campaign.

Option 2

- Under this option, unapproved artificial turf installations that existed prior to 19 September 2019 (the date that the revised Verge Management Policy was loaded on Council's website) would be granted an exemption from removing their unapproved installation.
- Council would issue retrospective s221 approvals, but with conditions.
- The key conditions would be that existing artificial turf installations:
 - cannot be replaced with new Artificial Turf, either at the end of useful life or by way of upgrade and must be replaced with an approved verge treatment compliant with Council's Verge Management Policy at the time.
 - must be maintained in good order and condition, to Council's satisfaction, or they must be replaced with an approved verge treatment compliant with Council's Verge Management Policy at the time.

- Council would also maintain the right to vary any approval, including requiring an owner to remove part of their artificial turf installation and remediate the area with an approved verge treatment compliant with Council's Verge Management Policy at the time, where the original turf installation is determine, at council's sole discretion, to be adversely impacting council's street tree(s) or the condition of the verge.
- Under s221, Council has a right to require the owner of any unapproved artificial turf installation (or any other verge alteration) to modify or remove that installation, including where the installation is believed (at Council's sole discretion) to be adversely impacting council's street tree(s) or the condition of the verge.
- Unapproved installations that occurred after 19 September 2019 would be subject to a removal order. (Subject to final confirmation, it is estimated that 3 installations occurred after 19 September 2019)
- This option varies from Council's legal advice because it enforces removal of unapproved installations prior to roll-out of the Information Campaign.
- Council could opt to fund the removals to avoid possible challenges and/or criticism for acting without proper consultation on policy position and/or lack of communication with residents.
- This option would be included in an update Verge Management Policy which would form part of Council's information campaign.

Option 3

- Under this option, unapproved artificial turf installations that existed prior to 19 September 2019 (the date that the revised Verge Management Policy was loaded on Council's website) would be granted an exemption from removing their unapproved installation.
- Council would issue a retrospective s221 approval, but with conditions.
- The key conditions would be that existing artificial turf installations:
 - cannot be replaced with new Artificial Turf, either at the end of useful life or by way of upgrade and must be replaced with an approved verge treatment compliant with Council's Verge Management Policy at the time.
 - must be maintained in good order and condition, to Council's satisfaction, or they must be replaced with an approved verge treatment compliant with Council's Verge Management Policy at the time.
- Council would also maintain the right to vary any approval, including requiring an owner to remove part of their artificial turf installation and remediate the area with an approved verge treatment compliant with Council's Verge Management Policy at the time, where the original turf installation is determine, at council's sole discretion, to be adversely impacting council's street tree(s) or the condition of the verge.
- Under s221, Council has a right to require the owner of any unapproved artificial turf installation (or any other verge alteration) to modify or remove that installation, including where the installation is believed (at Council's sole discretion) to be adversely impacting council's street tree(s) or the condition of the verge.
- All new applications under s221 or any unapproved installations detected and not included in the 2020 verge audit would be assessed on their merits and if they do not pose a risk to Council's street trees, would be issued with a conditional s221 approval.

- The key condition would be that artificial turf installations could not be replaced with new Artificial Turf, either at the end of useful life or by way of upgrade and must be replaced with an approved surface compliant with Council's Verge Management Policy at the time.
- This option would be included in an update Verge Management Policy which would form part of Council's information campaign.

Option 4

- Under this option, Council would undertake removal and remediation of unapproved artificial turf installations that were installed up to the end of the Information Campaign, over a nominated period of time – eg 3 financial years.
- Estimated cost of removal of artificial turf, replacement with loam and grass (or dolomite if resident prefers) plus disposal of residual to landfill is estimated at around \$1,500 per site (but actual costs will be dependent on actual area).
- Estimated 3 year cost is \$552,000
- Any unapproved installations that occur after end of the Information Campaign would require the owners to remove the artificial turf and remediate the verge at their own cost.
- This option would be included in an update Verge Management Policy which would form part of Council's information campaign.

Option 5

- Under this option, Council would undertake community consultation in relation to artificial turf installations on verges. Various options would be presented for community feedback, including complete ban (as per current Verge Policy), discussion of options for dealing with unapproved installations, and option to allow installations subject to criteria and conditions (to be developed).
- An initial information campaign would be undertaken to promote the s221 process only.
- Council would suspend action on unapproved until the results of community consultation were known and council could finalise its policy position.
- Council would then publicise its final policy position and its management approach to unapproved artificial turf installations based on the determined consultation outcome.

Ongoing Monitoring and Condition Assessment

Following the Information Campaign, Administration will act on any known installations that are defective or hazardous, following a reasonable notice period.

Thereafter, a annual inspection program would occur to monitor the remaining installations and to detect any new, unapproved installations. There is no current internal resource within Council to proactively monitor current or future installations and therefore this work needs to be undertaken by a third party on annual basis. The expected cost of each audit by a contractor is

estimated at around \$1,500 to \$2,000 plus Council staff time to process the audit data, load it onto Council's GIS, undertake assessments and then follow up specific sites that require compliance action.

Depending on the compliance option chosen by Council, there may be significant compliance and enforcement action required. There are currently no in-house resources available to undertake this work and therefore it may be that compliance and enforcement action will need to be outsourced to Council's lawyers, particularly if a property owner initiated an Ombudsman's review or legal action.

Verge Management Policy and Approved Fees and Charges

Depending on the option chosen, the Verge Management Policy will need to be reviewed and in any case was due for further review by August 2021. The Policy presently focusses on developing the verge, however further information needs to be made clear to residents regarding the ongoing maintenance responsibility.

In addition, there is a requirement to include additional permeable surfaces, such as Fitzgerald Fines, as an alternative to dolomite given that it is disliked due to its harsh look. Lawn is not always an option for owners/ residents given the maintenance requirement to mow and water, and as Council does not provide a mowing service.

Currently there are three (3) separate application forms for s221 Applications being for stormwater, crossovers and verges. It is envisaged that the three application forms will be combined into one form to make it easier for residents.

In the 2020/21 Approved Fees and Charges (Attachment 4), under "Road and Property Related Charges", there are new fees for a Verge Application (set at \$65.00), however this has not been implemented due to resident's being unaware of the requirement and the need to update the Verge Management Policy. It is envisaged that in the 2021-2022 Fees and Charges that the various s221 application fees would be consolidated into one, lower fee or set to zero to encourage residents to apply. The recommended fee structure will form part of the 2021/22 Budget discussion and be subject to Council resolution.

It is recommended that the Verge Management Application Fee be rebated to NIL for the remainder of 2020/21 to incentivise residents to make applications as required by s221 and the Verge Management Policy. The forecast revenue loss is limited given the low number of previous applications.

The current 2020/21 Fees and Charges (Attachment 4), under "Road and Property Related Charges", establishes a fee for Verge Maintenance (current fee \$295). This fee provides Council with a limited revenue when maintenance of the verge outside a property is required, particularly where a resident fails to maintain verge treatments that they have installed. It is proposed that this fee remain and that it be applied in circumstances including where residents fail to maintain artificial turf installations (or any other privately installed verge treatment) and council is required to repair, maintain or remove the installation.

Where an owner elects voluntarily to remove existing artificial turf and requests Council to undertake the work, it is envisaged that the Verge Maintenance Fee would be applied, plus the actual cost for disposal of old artificial turf to landfill.

Refer Attachment 4

BUDGET

There is no specific budget for the monitoring or remediation of Artificial Turf installations on verges. Future costs for the annual verge audit and any planned remediation works (should council elect to undertake removal and/or remediation of unapproved installations on behalf of residents should be separately budgeted from 2021/22 onwards.

Any remediation from an area other than verges, ie Brighton Road, should be subject to an individual project bid.

Annual auditing of verges, to inspect existing Artificial Turf and identify any new locations will need to be separately budgeted from 2021/22 onwards as the costs cannot be absorbed into existing budgets. It is envisaged that the audit will be around \$1,500-\$2,000 plus other costs for data handling, analysis and compliance action. A budget of around \$1,500 per site should be allowed for any removal/remediation.

If Council were to fund removal and remediation of all 368 unapproved artificial turf installations, then the estimated total cost would be around \$552,000 (say over 3 financial years).

LIFE CYCLE COSTS

Where there are installations of Artificial Turf present it may take many years to remove it from the Council verges as the condition of the surface will be varied based on the quality of the product, installation and date of thereof. Until such time, allowances will have to be accommodated in the Operational Budget for the inspections.