

ORDINARY MEETING	7
22 MAY 2024	

RECOVERY OF COSTS FOR DAMAGE TO COUNCIL ASSETS POLICY FOR ADOPTION

93/6/1 | #7386345

RECOMMENDATION:

That Council:

Adopts the Recovery of Costs for Damage to Council Assets Policy and associated Administrative Instruction.

INTERESTED PARTIES:

Nil

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

Council assets and/or infrastructure are being damaged by external parties, including external contractors and members of the public. The financial responsibility for these damages falls on the responsible parties, and if not recovered are absorbed into Council's operational budgets.

Council officers undertook a review of internal processes used to recover costs for damaged Council owned assets and/or infrastructure by external parties. This review revealed that any recovery of costs was occurring on an inconsistent and ad-hoc basis. Over a twelve (12) month period, six (6) incidents of damage were identified, the costs of which totalled approximately \$128,000, with \$35,000 unable to be recovered due to vandalism, \$43,000 was recovered through the current ad-hoc processes and \$50,000 was absorbed into operational budgets. It is likely that additional incidents, outside of the above examples, have also been absorbed into operational budgets. A proposed internal recovery of cost process has now been developed.

It is recommended that an organisation wide recovery of costs process be implemented to ensure that a consistent approach occurs across Council and to reduce the impact to operational budgets. The proposed policy and associated administrative instruction have been drafted to support the proposed internal process.

BACKGROUND:

Council officers undertook a review of the internal processes for recovering costs when Council owned assets and/or infrastructure are damaged by external parties. The review included consultation with asset owners across Council and consideration of possible legal implications including legislation and Council's standard terms.

COMMENT:

It is recommended that the Policy and associated Administrative Instruction be adopted to support the proposed organisational wide internal process. These documents set out Council's intentions of pursuing recovery of costs when Council assets are damaged by external parties and outlines the considerations that officers must consider.

They outline that Council reserves the right to recover costs incurred for labour, materials, equipment usage, administrative expenses and any other direct or indirect expenses when undertaking repair work on a Council asset which has been damaged by an external party or when Council alters and or repairs any damage caused by unauthorised works.

OPTIONS:**Option 1 (Recommended):**

That Council:

1. Adopts the Recovery of Costs for Damage to Council Assets Policy and the associated Administrative Instruction.

OR

Option 2:

That Council does not endorse the Recovery of Costs for Damage to Council Assets General Policy and the associated Administrative Instruction.

CONSIDERATIONS:**Risk Management:**

The policy has been assessed against Council's risk management framework and will assist in reducing risk to financial stability, reputation, and maintenance of infrastructure and assets.

Corporate and Operational Plans:

This policy supports the values and focus areas of the Corporate and Operational plans.

Statutory:

The *Local Government Act 2009* was reviewed and considered to ensure alignment of the policy.

CONSULTATION:

Consultation has occurred with officers affected by policies.

ATTACHMENTS:

Attachment 1: Recovery of Costs for Damages to Council Assets General Policy

Attachment 2: Associated Administrative Instruction to Recovery of Costs for Damages to Council Assets Policy.



Mark Wuth
Director Cairns Infrastructure & Assets

Attachment 1: Recovery of Costs for Damages to Council Assets General Policy

CAIRNS REGIONAL COUNCIL



General Policy

RECOVERY OF COSTS FOR DAMAGE TO COUNCIL ASSETS

Intent	To establish a policy for the management of undertaking recovery of costs for damage to Council assets by external parties.
Scope	This policy applies when Cairns Regional Council assets are damaged by external parties and cost recovery is not covered by any other applicable policies.

PROVISIONS

That Council reserves the rights to recover costs of labour, materials, equipment usage, administrative expenses and any other direct or indirect expenses incurred when undertaking repair work on a Council asset which has been damaged by an external party or when Council alters and or repairs any damage caused by unauthorised works.

When considering whether to recover costs consideration will be given to:

- The extent of the damage: Council will consider the severity and extent of the damage inflicted on Council assets.
- The cause of the damage: Council will undertake an assessment of liability and determine appropriate cost recovery.
- The responsibility of the damage: Where possible, Council will identify who is responsible, this could include individuals, businesses, contractors, or other entities.
- The financial impacts of the damage: Council will consider the costs of pursuing cost recovery efforts and the likelihood of successful recovery.

When undertaking the recovery of costs Council will:

- Make the recovery process clear, simple to administer and cost effective.
- Calculate costs based on actual expenditure or pre-determined rates established by Council.
- Where possible, Council will notify the external party of the incident and Council's rights to recover costs. Where it is not possible, and the repair work is necessary for safety reasons the work may commence prior to notification to the external party.
- Maintain contact with the responsible person throughout the process.
- Ensure any costs recovered for the repairs are not more than the cost to repair.
- Payment terms and methods shall be specified on the invoice, allowing reasonable time for payment.
- The costs of recovery will be considered a debt under Council's financial principles.
- Council's Debt Recovery Policy and any other applicable policies may apply for any debts that become overdue.

In the event of disputes regarding the invoices amount or the necessity of the repair work decision, the external parties shall have the right to contest the charges through Council's General Complaints policy.

In accordance with s142(4) of the *Local Government Act 2009*, when the Council asset is located on private property the following must occur:

- A remedial notice to the responsible person to remedy the situation must be given to the responsible person.

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- If the responsible person fails to take action required under the remedial notice then Council may after giving reasonable entry notice, take the action required under the remedial notice.
- Council may then recover the costs reasonably incurred.

When the Council asset is located on Council land, a remedial notice is not required however the responsible person will be made aware and kept informed of the process.

DEFINITIONS

Assets

Council owned property and/or infrastructure including both above and underground which also includes roads and reserves.

Debt

Amount owed to Council for the recovery of costs associated with the damage to Council assets.

External Party

Any person, group or entity that is not a direct Cairns Regional Council employee, this may include contractors to Cairns Regional Council and members of the public.

RELATED DOCUMENTS

Administrative Instruction – Cost Recovery for Damage to Council Assets - [#7368269](#)

This policy is to remain in force until otherwise determined by Council.

General Manager responsible for Review:

Cairns Infrastructure & Assets

ORIGINALLY ADOPTED: {Enter Date}

CURRENT ADOPTION: {Enter Date}

DUE FOR REVISION: {Enter Date}

REVOKED/SUPERSEDED: {Enter Date}

.....
{Insert Name}
CHIEF EXECUTIVE OFFICER

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Attachment 2: Associated Administrative Instruction to Recovery of Costs for Damages to Council Assets Policy.

CAIRNS REGIONAL COUNCIL

Administrative Instruction

RECOVERY OF COSTS FOR DAMAGE TO COUNCIL ASSETS

- Intent** To provide clear direction to Council officers in process and decision making when undertaking cost recovery for damage to Council assets by external parties.
- Scope** Applies to all employees undertaking cost recovery in accordance with the General Policy - Recovery of Costs for Damage to Council Assets.

PURPOSE

The purpose of this instruction is to outline the responsibilities, considerations and process when undertaking cost recovery for damage to Council assets.

The aim is to undertake cost recovery for damages to Council owned property and/or infrastructure in an objective and timely manner in accordance with the associated General Policy –Recovery of Costs for Damages to Council Assets ([#7368047](#)).

PROVISIONS

Decision Making

When deciding to undertake cost recovery the following is to be considered:

- Extent of the damage including the severity and extent of the damage. Minor damages may not warrant cost recovery, whereas significant or extensive damages may.
- Any contract provisions between the external parties and Council.
- Results of the investigation into the cause of the damage whether it was accidental, deliberate, or due to negligence and who was responsible for the damage and whether they can be identified.
- The value of the repair including labour and materials.
- The criticality of the asset damaged.
- Other matters as required.

Commitment

Cairns Regional Council officers commit to:

- Maintaining contact with the external party with clear and considered correspondence.
- Correspondence regarding the outcome will include reasons for the decision.
- Providing an invoice (No GST) that contains the costs of labour and materials.

Cost Recovery Process

The cost recovery process is to be recorded within Council's corporate systems.

1. Notification received by Cairns Regional Council of the damage, entered as a Customer Request Management (CRM).
2. Council Officers to commence an investigation of how the damage occurred, including collecting any evidence.

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- a. If on public land, then Council Officers to facilitate the repairs of the damage. Officers should maintain accurate records of all cost recovery activities, including photographs, evidence, invoices issued, payments received, and any correspondence related to the works being undertaken.
 - b. If on private land give a remedial notice to remedy the damage. If the remedial notice is not actioned after giving reasonable entry notice, facilitate the repairs of the damage.
3. Notification to External Party (if known) that a Cairns Regional Council investigation is underway and cost recovery may occur. The notification should include detailed information regarding the nature of the services provided or damages incurred.
 4. Council Officers determine if cost recovery is to occur. Officers should calculate the costs incurred during the repair work, including labour, materials, equipment usage, administrative expenses, and any other direct or indirect expenses. Council must use actual expenditure records or pre-established rates for cost determination.
 5. Notification to External Party of the outcome of the investigation including reasons for the decision.
 6. If cost recovery is to occur, Council Officers to arrange with Account Receivable for the creation and issue of an invoice to external party that includes the details of the repair work.
 7. If invoice remains unpaid, the debt will be actioned in accordance with Cairns Regional Council's Debt Recovery Policy.

It is noted that the external party has the right to lodge an "administrative action complaint" should they be dissatisfied with the decision, as per Council's General Complaints Management Policy and Administrative Action Complaints Management Administrative Instruction.

Responsibilities

The following responsibilities for undertaking cost recovery are as follows:

Asset Owner

The Asset Owner of the damaged asset when undertaking cost recovery process is responsible for:

- The process of cost recovery.
- The investigation of the damage including the collection of evidence.
- To facilitate the repair of the damage.
- The decision to undertake cost recovery in accordance with the provided tools and assessment criteria.
- Issuing of correspondence advising that council is investigating undertaking cost recovery.
- Issuing of correspondence advising of the outcome of the investigation as soon as practicable.
- Issuing of invoice with associated correspondence will be issued as soon as practicable.
- Ensure that any costs pursued for repairs are not more than the cost to repair of materials and labour charges.
- Business support for the asset owner may assist with the administration of the process.
- Before undertaking cost recovery, when the damage is located on private property Council must first:
 - Give a remedial notice to the responsible person.
 - If the remedial notice is not actioned then after giving reasonable entry notice, remedy the damage.

Governance

The Governance team of Cairns Regional Council involvement within the process includes:

- Being a centralised sense check of the decision to ensure consistency across the organisation.
- Liaising with the external party's insurance company if applicable

Finance

Finance teams of Cairns Regional Council involvement within the process includes:

- Management Accounts will advise the account the funds are to be allocated to for the invoice.
- Accounts receivable will create the applicable invoice.
- Council's Debt Recovery Policy is applicable should the debt remain unpaid.

External Party

The external party responsible for damage is responsible for:

- The cost of the repairs (No GST) or
- If a contracted supplier, the repairs if deemed appropriate by the asset owner.

This Administrative Instruction is to remain in force until otherwise determined by the Chief Executive Officer.

Director responsible for Review:

{Enter Director Position}

Originally Approved {Enter Date}
 Current Approval {Enter Date}
 Due for Revision {Enter Date}
 Revoked/Suspender {Enter Date}

.....
 {Insert Name}
 CHIEF EXECUTIVE OFFICER

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