

POL-C-058 Private Development within City Road Reserves

1. PURPOSE

This Policy is intended to identify the types of private development that are acceptable within City road reserves and to assist the City in assessing and determining applications for such development.

2. OBJECTIVES

The objectives of this policy are to:

1. Determine the types of private development that are acceptable within City road reserves;
2. Ensure that the current and future use of City road reserves for public purposes is protected from inappropriate development;
3. Ensure that the City of Swan is protected from any claim for compensation resulting from injury, loss or damage to any person or property, due to the private development; and
4. Minimise future maintenance costs for the City of Swan of infrastructure required for private purposes.

3. BACKGROUND

3.1 General Background

Wherever possible all development should be contained within private property. However, there are circumstances where private development may need to legitimately encroach into City road reserves and where the development would contribute to the streetscape or vitality of an area, such as verandah posts and alfresco dining. It is therefore important to define the types of private development that are acceptable within road reserves.

Private development within City road reserves includes mainly:

1. permanent parts of a building or structure, such as verandah posts, subdivision entry statements, tables and chairs fixed to the ground, cables and infrastructure; and
2. non-permanent items, such as tables and chairs not fixed to the ground, the display of goods for sale, small portable advertising signs, car parking and landscaping.

Some of these private developments, such as the display and sale of goods in public places, and the establishment of eating areas in public places, are dealt with by City Local Laws. Some private developments in road reserves are also exempt from the need to obtain development approval under the City's Local Planning Scheme No. 17.

As a general rule, the City's Planning Scheme deals with permanent and semi-permanent developments within road reserves, while the City's Local Laws deal mainly with temporary developments.

The key issues associated with private developments within City road reserves are:

- a) the need to determine the types of private development that are appropriate within road reserves;
- b) the need for the City to be protected from any claim or compensation arising from the development;

- c) to ensure that the owner of the private development is readily identifiable and that the City is indemnified in perpetuity by any successive owners;
- d) to maintain reasonable public use of and access to the road reserve;
- e) the ability require the private development to be modified or removed (at no cost to the City) in the event that either the City or a Public Authority requires access to the road reserve;
- f) the ability to require maintenance of the development to a prescribed standard;
- g) the ability to require repair to any damage of the road reserve, or services located within it; and
- h) the need to ensure that the private developer takes out sufficient public liability insurance.

3.2 Statutory Background

The issues of indemnity and insurance are partly dealt with by Regulation 17 of the Local Government (Uniform Local Provisions) Regulations 1996, which state that:

- (5) A person who constructs anything in accordance with permission under this section is required to –*
- a) maintain it; and*
 - b) obtain from an insurance company approved by the local government an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of its construction, maintenance, or use.*

This is a minimum requirement of the regulations and allows the City to impose conditions. However, this requirement of the Regulations relates solely to the “person who constructs” the development, and does not apply to subsequent owners of the development.

Obviously, not all of the above issues will be relevant to all types of private development, and certainly not all types of development will be dealt with by Local Laws, or will require development approval under the City’s Planning Scheme. Accordingly, it may also be necessary, as a result of this Policy, to amend existing Local Laws or introduce new Local Laws to deal with the above issues in situations that will not be covered by the City’s Planning Scheme or current Local Laws.

4. APPLICATION

This Policy only applies to private developments that require development approval under the City’s Local Planning Scheme No. 17, within road reserves that are under the care, control and management of the City of Swan. This Policy does not apply to:

- developments that are exempt from the need to obtain development approval under the City’s Planning Scheme, such as crossovers; or
- developments placed on or within a road reserve under any written law; or
- private signs within road reserves; or
- private development on road reserves that are not under the care, control and management of the City of Swan; or
- private development on land that is a reserve under the Land Administration Act 1997 or reserved under the City’s Planning Scheme, but which is not a City road reserve.

5. POLICY STATEMENT

5.1 General Principles

5.1.1 Unless otherwise stated, the City will require all private development covered by this policy to be the subject of a licence agreement with the City. This agreement will be required as a condition of development approval and must be finalised prior to the commencement of development. The agreement will, inter alia:

- a) indemnify the City against any loss or damage suffered as a result of the development, and to secure this indemnity by the developer obtaining an appropriate insurance policy;
- b) require the developer to maintain, alter, repair or remove the development, in part or in whole, if the land is required for the purpose of carrying out any public works, or other works authorised by statute, without the City being liable to compensate any person therefor; and
- c) require the developer to make good any damage caused to the road reserve within a prescribed period of time.

The agreement will oblige the affected landowner to require any transferee of the land to enter into an agreement with the City in substantially similar terms prior to registration of any transfer. The agreement will also charge affected land in favour of the City in respect of the observance and performance of the landowner's obligations and empower the City to lodge a caveat against the land in order to protect its interests under the agreement.

5.1.2 There is a general presumption against private development within City road reserves which:

- a) would cause an unacceptable visual or physical obstruction or present a potential hazard to vehicles or pedestrians;
- b) would not maintain or enhance the streetscape and amenity of the area;
- c) requires realignment of existing services or infrastructure, unless the owner pays for the realignment of that service or infrastructure;
- d) cannot be constructed, maintained or removed with minimal interference to the use of or access to the road reserve;
- e) is not directly associated with the use or development of an adjoining private property; and
- f) is located within a road carriageway.

5.2 Specific Types of Development

5.2.1 Permanent and Semi-Permanent Structures

5.2.1.1 The City will generally only allow verandah posts, alfresco dining and private infrastructure such as communication cables within City road reserves where consistent with the streetscape and aesthetic quality of the area.

5.2.1.2 There is a general presumption against subdivision entry statements being constructed within road reserves, due to the difficulties associated with imposing maintenance, removal or indemnity responsibilities on the subdivider once the subdivision has been completed and the lots sold.

Document Control

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