

# Works in City Managed Reserves

## POL-RDS-09



### Objective

The City of Mandurah (the City) recognises the importance of ensuring that all Works undertaken within reserves that are under the care and control of the City (City Managed Reserves) are able to be completed safely and in the best interest of the community.

This Policy seeks to:

- ensure that all Works within City Managed Reserves are regulated in accordance with the *Local Government Property and Public Places Local Law 2016* (the Local Law) and the *Local Government (Uniform Local Provisions) Regulations 1996* (the 'ULP Regulations').
- ensure that Works are completed safely and competently.
- ensure that City owned assets are protected from damage or modification without the City's permission; and
- the City has granted permission to carry out works unless exempt.

### Applicability

This Policy applies to persons or entities including all private property owners or occupiers in the City and persons, organisations or Utility Providers completing Works within a City Managed Reserve.

This Policy does not apply to Works being completed by, or on behalf of, the City.

### Statement

#### Works that Require a Permit

The ULP Regulations requires the following Works can only be undertaken upon the City issuing a Works in City Managed Reserves Permit:

- obstruct a public thoroughfare (r. 6(1));
- interference with the soil of, or anything on, land that is local government property (r. 5(1));
- taking anything from land that is local government property (r.5(1));
- making or making and leaving an excavation in a public thoroughfare or land adjoining a public thoroughfare (r.11(3)); or
- construct anything on, over or under a public thoroughfare or other public place that is local government property (r.17(1)).

Prior to any of the above Works commencing within City Managed Reserves, the person(s) responsible for the Works shall submit a Works in City Managed Reserves Permit Application in accordance with the City's Works in City Managed Reserves Guidelines (the 'Guidelines') and obtain a Permit.

The ULP Regulations requires that the Works relating to a crossover can only be undertaken upon the City issuing a Crossover Permit (r.12(1)). Prior to constructing or modification of a crossover, the person(s) responsible for the Works shall submit a Crossover Permit Application in accordance with the Guidelines and obtain a Permit.

The *Local Law* requires that a person or entity shall not, without a Permit issued by the City, conduct the following Works (including but not limited to):

- dig or otherwise create a trench through or under a kerb or footpath (cl 7.2(1)(a));

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- throw, place or deposit anything on a verge except for the purpose of removal by the local government under a bulk rubbish collection (cl 7.2(1)(c));
- damage, remove or interfere with any part of a thoroughfare, kerb, footpath or any structure or sign erected on or in a thoroughfare (cl 7.2(1)(d));
- cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare (cl 7.2(1)(e));
- cause any obstruction to a water channel or a water course, including drainage swales, in a thoroughfare (cl 7.2(1)(f));
- unless installing, or in order to maintain, a Permissible Verge Treatment:
  - lay pipes under or provide taps on any verge (cl 7.2(1)(h)(i)); or
  - place or install, on any part of a thoroughfare, anything such as crushed limestone, gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust, including for the purposes of storage of stockpiling (cl 7.2(1)(h)(ii));
- provide, erect, install or use in or on any building, structure or land abutting a thoroughfare any hoist or other thing for use over the thoroughfare (cl 7.2(1)(i));
- interfere with the soil of, or anything in, a thoroughfare or take anything from a thoroughfare (cl 7.2(1)(j));
- drive any vehicle over or across a kerb or footpath except at a vehicle crossing (cl 7.2(1)(k));
- drive a vehicle or permit a vehicle to be driven across a kerb or footpath if such vehicle is so heavy or is of such a nature that it causes or is likely to cause damage to the kerb or the paving of the footpath (cl 7.2(1)(l)); or
- drive or take a vehicle on a closed thoroughfare unless it is in accordance with any limit or exception specified in an order made under s.3.50 of the *Local Government Act 1995* (cl 7.2(2)).

Prior to any of the above Works commencing within City Managed Reserves, the person(s) responsible for the Works shall submit a Works in City Managed Reserves Permit or Crossover Application in accordance with the Guidelines and obtain a Permit.

### Non-Compliant Verge Treatments

Prior to the commencement of any verge treatment Works not in accordance with the Permissible Verge Treatment requirements as defined by the Local Law, the person(s) completing the Works shall submit an Application in accordance with the Guidelines and receive a Permit.

### Compliant Verge Treatments

Verge treatments that comply with the Permissible Verge Treatment as defined within the Local Law are exempt from requiring a Permit.

### Prohibited Works

The City will not accept an Application which includes in whole, or in part, Works including activities identified as being generally prohibited within the Local Law. The City will return any Application and the associated fees associated to the Applicant.

### Affected Persons to be Notified

As part of the Application, the City may require Affected Persons to be notified in accordance with s. 3.51 of the *Local Government Act 1995* (the 'Act'). Where such notices are required, the City will

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make a determination of an Application only after the City has completed the required notification period.

### **Application Fees**

The Applicant will be responsible for the payment of Application fees on submission of the Application. Application fees are subject to annual review and are published in the City of Mandurah Fees and Charges Schedule.

### **Public Liability Insurance**

For all Works in City Managed Reserve Permit Applications, Permit Holders are required, at their own cost, to effect and maintain Public and Products Liability Insurance against any claim in respect of physical loss or destruction of, or damage to, or loss of use of any real or personal property, or personal injury (including illness) to or death of any person, arising out of, or caused by the performance or non-performance of the Works. Public Liability insurance policies must be endorsed to extend to include liability arising out of the use of an unregistered motor vehicle and contain a cross liability extension.

The Public and Products Liability cover amount is to be no less than \$20 million in respect of any one claim and unlimited as to the number of claims except for Products Liability which may be limited to \$20 million for any one claim and in the aggregate.

The City may, at its sole discretion and by written notice, accept a lower amount of Public and Products Liability Insurance on a case-by-case basis.

### **Application Determination**

In determining an Application, the City may:

- approve the Application and issue a Permit subject to conditions at the City's discretion. The conditions are to ensure standards of work and to ensure public safety as prescribed in the Guidelines; or
- refuse to approve the Permit whereupon the Applicant will receive written notice of the refusal and the reasons for such refusal.

### **Objection of Permit Determination**

The Applicant, Permit Holder or an Affected Person may submit an objection to the City in accordance with s.9.5 of the Act and r.33 of the *Local Government (Functions and General) Regulations 1996*. An objection must be submitted no later than 28 days following the determination of an Application.

The Permit Holder must submit an objection to Permit conditions prior to the commencement of Works. Once the Applicant has commenced works, it is deemed that the Applicant accepts all conditions of the Permit as issued.

### **Works to be Consistent with Application and Permit Conditions**

All Works shall be completed in accordance with the information and details provided within the Application, and any conditions of approval as detailed in the Permit.

### **Cancellation of Permit**

The City may cancel, by written notice, a Permit where:

- The Applicant has not complied with, in whole or in part, the conditions of the Works in the Permit;
- The Applicant has not complied with any provision of any written law or regulation which may relate to the Works regulated by the Permit;

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- Where additional information has been received by the City which was withheld at the time of the Application which in the City's opinion may have had material impact on the City's assessment and determination of the Application; or
- Where, in the opinion of the City, the Works are being carried out in a fashion that creates an unmanageable hazard.

### Validity of Permits

A Permit is valid for the period stated within the Permit. If Works have not substantially commenced within this period, the Permit is considered void without written notice.

### Safety at Site Works

The Permit Holder of a Permit has a duty of care to take all reasonable steps to prevent injury to any person or damage to property while carrying out the Works.

### Permit Holders to Follow Instructions

The Permit Holder must follow any instructions issued by the City in the performance of any Works which a Permit has been obtained.

The City may issue instructions to:

- eliminate or mitigate emerging hazards;
- respond to changes in the environment;
- eliminate conflict with other Works; or
- respond to legitimate complaints.

All instructions will be issued via a written letter (Letter of Instruction) to the Permit Holder. In cases where the immediate concern is health and safety, the City will issue a verbal instruction to the Permit Holder followed by a Letter of Instruction. All instructions are to be acted upon immediately. Where a Permit Holder fails to act upon a Letter of Instruction, the City reserves the right to cancel the Permit and may take other actions as deemed necessary by the City.

### Definitions

**Affected Person** refers to a person or entity who could be directly impacted by the proposed Works. This may include, but not limited to, the following impacts;

- removal, restriction or modification of access to a property by owner or occupier;
- noise, odour or dust generated by the Works that may negatively impact on health and wellbeing of persons, or negatively impact the general use and enjoyment of a property by an owner, occupier or entity; or
- remove or modify any verge treatments installed and maintained by a property owner, occupier or entity.

**Applicant** means the individual, organisation or corporation who submits a Works in City Managed Reserves Permit Application or the Crossover Application to the City in the correct manner.

**Application** means the City's Works in City Managed Reserves Application or the Crossover Application.

**City Managed Reserve** means any parcel of land, generally owned by the State of WA, under the care and control of the local government and includes verge areas or thoroughfares under the control of Main Roads WA, where the land has been identified as the responsibility of the City.

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**Commenced** means the commencement of any construction activities not including preliminary or preparatory works such as survey, design, approvals, site mobilisation or site testing.

**Crossover** has the same meaning as 'crossing' in cl.1.5 of the *Local Government Property and Public Places Local Law 2016*.

**Permissible Verge Treatment** has the meaning given to it in cl 7.7 of the *Local Government Property and Public Places Local Law 2016*.

**Permit** has the meaning given to it in Part 12 of the *Local Government Property and Public Places Local Law 2016* and includes the Works in City Managed Reserves Permit or the Crossover Permit.

**Permit Holder** means a person or entity who holds a valid Works in City Managed Reserves Permit or Crossover Permit.

**Street Tree** has the meaning given to it in cl.1.5 of the *Local Government Property and Public Places Local Law 2016*.

**Verge** has the meaning given to it in cl.1.5 of the *Local Government Property and Public Places Local Law 2016*.

**Utility Provider** means an organisation with legislated powers for the provision of a utility such as Western Power, Water Corporation, Telstra, Alinta or other similar organisations.

**Works** means activities as defined in Part 7 of the *Local Government Property and Public Places Local Law 2016* or work or doing of a thing as defined in the *Local Government (Uniform Local Provisions) Regulations 1996*, or other construction or maintenance work or any other work that causes encroachment, interference or obstruction to the normal use of the reserve.

## Legislative Context

*Local Government Act 1995*

*Local Government (Uniform Local Provisions) Regulations 1996*

*Local Government (Functions and General) Regulations 1996*

*Land Administration Act 1997*

*Work Health and Safety Act 2020*

*Environmental Protection (Noise) Regulations 1997*

*Local Government Property and Public Places Local Law 2016*

## Review

This Policy reviewed every two years, or when changes are made to the Local Law or ULP Regulations or other relevant legislation.

## Related Documents

These documents are mandatory and required to give effect to this policy:

City of Mandurah Register of Delegated Authority, specifically;

- DA-LOC 03 City of Mandurah Local Laws – Administration;
- DA-LUP 01 Private Works on, over or under Public Places;
- DA-LUP 02 Public Thoroughfare - Dangerous Excavations;
- DA-LUP 03 Obstruction of Footpaths and Thoroughfares; and
- DA-LUP 04 Crossing - Construction, Repair and Removal

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### Supporting Documents

The following documents inform this Policy:

Policy POL-LUP 03 Unauthorised Clearing of Vegetation Policy  
Policy POL-CPM 05 Complaints Management  
Policy POL-CPM 07 Infrastructure Asset - Management, Capitalisation and Depreciation  
Policy POL-RKM 01 Risk Management Policy  
Policy POL-RDS 06 Management of Trees in Streets and Public Open Spaces  
City of Mandurah Restoration and Reinstatement Specification  
City of Mandurah Guidelines and Technical Specifications for Crossovers  
City of Mandurah Guidelines for the Preparation and Implementation of Traffic Management Plans  
Traffic Management for Works on Roads Code of Practice 2018 or latest version (Main Roads Western Australia).  
Utility Providers Code of Practice for Western Australia 2015 or latest version (Utility Services Providers Committee).

**Responsible Directorate:** Built and Natural Environment

**Responsible Department:** Technical Services

**Reviewer:** Manager Technical Services

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Amendments			
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