

GUIDELINES FOR MANAGING OBSTRUCTIONS AND ENCROACHMENTS IN ROAD RESERVES



OBJECTIVES

These guidelines have been developed:

- To improve community awareness and communication with the public in clarifying Council's responsibility as the roads authority for all roads (except for Freeways), in managing obstructions and encroachments within public roads; and
- To ensure public roads are free of obstructions for the free and safe passage of people and vehicles; and establishment of utility services.

DEFINITIONS

Direction – An order or instruction, which may be given verbally or in writing, to a person requiring compliance with any provision of the Roads Act, 1993 or any other Act.

Encroachment – Temporary or permanent intrusion upon land that is part of the public road reserve.

Footway – That part of a road that is set aside or formed as a path or way for pedestrian traffic. This area may or may not be used by bicycle traffic.

Hazard – A situation that has the potential to harm the health and safety of people, damage infrastructure assets, vehicles or equipment, and/or adversely affect the environment; includes a structure or thing that is likely to obscure or limit the view of the driver of a motor vehicle on a public road or cause inconvenience or danger in the use of a public road.

Obstruction – Any object which impedes or prevents the free and safe passage of pedestrians and vehicles.

Offender – Person or party that has created the hazard, obstruction or encroachment on the road reserve.

Penalty Notice – An infringement notice; includes a fine payable to the State Debt Recovery Office, and issued by an authorised Council Officer.

Road reserve – All of the land comprising a public road, and includes the carriageway, nature strip and footway from property boundary to property boundary.

Unauthorised works – Works that are carried out without a permit or approval from Council.

Utility services – Public infrastructure services including water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services.

INTRODUCTION

Obstructions and encroachments often exist on the road reserve and are usually identified and reported by the general public and/or Council Officers undertaking inspections. Such obstructions and encroachments are dealt with generally under the provisions of the Roads Act, 1993 and other relevant acts.

The footway is intended for safe off-road pedestrian access and is also nominally allocated to utility services in accordance with the NSW Streets Opening Conference "*Guide to Codes and Practices for Streets Opening (2009)*".

Council, as the roads authority, is the owner of the footway and has a responsibility to ensure footways are free from hazards.

Property owners have in many instances constructed in, or modified the footway for their own benefit without approval from Council, and this has been found to be a common occurrence in many parts of the Gosford local government area.

In most cases property owners are unaware of the risks and liability for such actions; and that Council could direct persons who are responsible for creating the hazards to remove such hazards at their cost, or reimburse Council for the cost of the removal of the hazards and re-establishing the footway for safe pedestrian use.

Utility service providers are also not responsible for re-establishing any unauthorised works in the footway following the completion of their installations.

This guideline is intended to outline Council's procedures in the management of obstructions and encroachments in the public road reserve.

ASSESSMENT AND IMPLEMENTATION PROCESS

If an obstruction or encroachment is reported, Council Officers will investigate to determine if it is in the road reserve and if it poses a hazard or hindrance to:

- 1 Pedestrians;
- 2 Vehicles;
- 3 Utility service installation, access and maintenance; and
- 4 The environment

The investigations will also include identifying person/s responsible for creating the hazard, that is, the Offender.

PROPOSED ACTIONS WHEN AN OBSTRUCTION IS ASSESSED AS A HAZARD

If an obstruction or encroachment has been assessed as a hazard, a Compliance Officer will initiate compliance action via a Direction served upon the Offender. The Direction will include works to be undertaken for the removal of the hazard and rectification of the area concerned.

Council Officers will consider a number of options available to them in managing cases where the Offender fails to comply with Council's Direction. Options may include Council undertaking remedial works to make the area safe, or removing the hazard and recovering the costs for the work from the Offender via the raising of a charge over their property.

If necessary, Council may also take legal action to recover its costs.

Council's Compliance Officers may also serve the Offender with Penalty Notices in cases where Directions are not complied with.

PROPOSED ACTIONS WHEN AN OBSTRUCTION IS ASSESSED AS NON-HAZARDOUS

If an obstruction or encroachment has been assessed as non-hazardous, Council Officers will consider whether the obstruction or encroachment poses an adverse impact on the public's use of the road reserve, Council's infrastructure assets and the provision of utility services. Factors to be considered will include:

- 1 Existing and future utility service allocations;
- 2 Future road construction;
- 3 Current and future maintenance requirements; and
- 4 Benefits that would be derived from retaining the obstruction.

Council Officers will consider the additional burden (of costs) to the community and utility service providers should the obstruction be found to compromise the existing or future use of the road reserve.

If the obstruction has been assessed as not adversely affecting the existing use of the road, a letter will be issued to the Offender to advise of Council's position on the matter and that the obstruction may be required to be removed in the future at Council's discretion.

The following are examples of obstructions, if assessed as non-hazardous, that would be considered unauthorised works but may be allowed to remain in the road reserve for a limited time:

- Vegetated retaining wall that is providing stability to a steep section of the road and landscaping that enhances the aesthetics of the streetscape – This would be demolished if and when required for future road construction.
- Planting and landscaping in steep embankments – These areas are usually not suitable for pedestrian movements or utility installation. Apart from enhancing the aesthetics of the streetscape, the vegetation would help stabilise the embankment. Council will require that rocks that may potentially fall into the road reserve be removed.
- Parking pads in the road reserve, usually in steep narrow roads where room for parking is minimal or parking in the road may compromise road safety – This provides additional parking areas for residents however, they may be demolished in future road construction.
- Letter boxes in the road reserve – These are usually in steep embankments and must not obstruct pedestrians and vehicular movements.

Whilst no authorisation or approval will be granted for the obstructions, Council will not reinstate the obstructions or alter Council's design and construction processes in order to accommodate such obstructions. In most cases, the material that is removed will be offered to the relevant property owner.

ENQUIRIES

Contact Council's Infrastructure Planning staff on 4325 8222 or via email to gocity@gosford.nsw.gov.au.