

## WORKS WITHIN ROAD RESERVE FACT SHEET – YOUNG OFFICE

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### What is the applicable legislation applying to the public road reserve?

The area between your front wall and the opposite front wall across the street is the public road reserve under the care and control of Council. There are two pieces of legislation that apply to this land:

Section 138 of the NSW Roads Act (1993) states:

#### **138 Works and structures**

- 1) *A person must not:*
  - a) *erect a structure or carry out a work in, on or over a public road, or*
  - b) *dig up or disturb the surface of a public road, or*
  - c) *remove or interfere with a structure, work or tree on a public road, or*
  - d) *pump water into a public road from any land adjoining the road, or*
  - e) *connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.*

*Maximum penalty: 10 penalty units.*

Section 68 of the local Government Act (1993) states:

#### **68 What activities, generally, require the approval of the council?**

- 1) *A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.*

**Note.** *A person who fails to obtain an approval or who carries out an activity otherwise than in accordance with an approval is guilty of an offence—see secs 626 and 627.*

Applicable sections of the Table are:

#### **Table Approvals**

##### **Part B Water supply, sewerage and stormwater drainage work**

1. *Carry out water supply work*
2. *Draw water from a council water supply or a standpipe or sell water so drawn*
3. *Install, alter, disconnect or remove a meter connected to a service pipe*
4. *Carry out sewerage work*
5. *Carry out stormwater drainage work*
6. *Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer*

##### **Part E Public roads**

1. *Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway*
2. *Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road*

Council has application processes to ensure land owners can meet their legal requirements under these acts.

## What is the purpose of the legislation?

The purpose of the applicable legislation is to regulate activities that can occur on publicly owned land. This is because the public (represented by Council) can be adversely affected by work within the road reserve and can be exposed to risk through private activities carried out on public land. Additionally, public land should not be used by individuals for personal gain.

## How does Council assess public risk?

In accordance with AS/NZ 4300 Council assesses the level of risk using a probability / consequence matrix:

<b>RISK ASSESSMENT RECKONER</b>	<b>PROBABILITY HOW LIKELY IS IT TO HAPPEN?</b>			
<b>CONSEQUENCES</b> HOW BAD IS IT LIKELY TO BE?	<b>High/very likely: could happen at any time</b>	<b>Medium/likely: could happen some time</b>	<b>Low/unlikely: could happen, but very rarely</b>	<b>Rare/very unlikely: could happen but probably never will</b>
<b>1: Kill or cause permanent disability or ill health</b>	<b>1-H</b>	<b>1-M</b>	<b>1-L</b>	<b>1-R</b>
<b>2: Long term illness or serious injury</b>	<b>2-H</b>	<b>2-M</b>	<b>2-L</b>	<b>2-R</b>
<b>3: Medical attention and several days off work</b>	<b>3-H</b>	<b>3-M</b>	<b>3-L</b>	<b>3-R</b>
<b>4: First aid needed</b>	<b>4-H</b>	<b>4-M</b>	<b>4-L</b>	<b>4-R</b>

(Adapted from WorkCover's HAZPACK Worksheet and Council's general risk assessment table)

## What works within the road reserve require Council approval?

The maintenance of shop fronts, windows, awnings etc that abut or overhang the public road has been raised as an issue requiring Council clarification. Section 138 of the Roads Acts states Council approval is required to 'erect a structure or carry out a work in, on or over a public road'. What is the definition of 'carry out a work'?

The dictionary provided with the legislation does not define 'a work'. Therefore Council must decide what 'a work' is taking into account the purpose of the legislation and managing the public risk.

### A work that exposes pedestrians to the risk of slip, trip or fall or a work that requires:

- changes to normal pedestrian movements
- changes to normal parking arrangements
- erection of a temporary structure such as a scaffold will require Council approval.

## Does sweeping or cleaning the footpath require Council approval?

This activity is usually carried out prior to normal retail hours and the probability of interaction between the broom/cleaner/water and the public is low / unlikely. Council does not require approval.

Council does write to shop owners in winter to request the use of water is minimised due to the pedestrian slip hazard caused by black ice.

### **Does removing cobwebs require Council approval?**

Depends on the method:

Are you erecting a structure (scaffold) to clean? The legislation clearly states Council approval is required.

However, if you are using an extension broom at 7am the probability of interaction between the broom and the public is low / unlikely. Council does not require approval.

### **Does using a ladder or trestle require Council approval?**

Are you erecting a structure (trestle)? The legislation clearly states Council approval is required.

However, if you are using a ladder for 5 minutes to change a light bulb outside of normal retail hours (say at 7am) the probability of interaction between the ladder and the public is low / unlikely. Council does not require approval.

If your ladder represents a slip, trip or fall hazard to pedestrians; for example it is there during the middle of the day and a painter or electrician is working from it; then Council approval is required.

### **Does cleaning the shop windows require Council approval?**

This activity is usually carried out prior to normal retail hours and the probability of interaction between the window cleaner and the public is low / unlikely. Council does not require approval.

It is requested that this activity be carried out prior to normal retail hours to ensure the probability of interaction between the window cleaner and the public remains low.

### **Does painting the awning or front façade require Council approval?**

Is your painter erecting a structure to carry out the painting? The legislation clearly states Council approval is required.

Is your painter using an extender roller, working from the ground, outside of normal retail hours? Is the painter clearly not causing a pedestrian hazard? The probability of interaction between the painter and the public is low / unlikely and Council does not require approval.