

Permits to Use Verge Areas and Protection of City Property During Building Works Policy

Responsible Directorate	Planning and Development
Responsible Business Unit/s	Development Services
Responsible Officer	Manager Development Services
Affected Business Unit/s	Development Services Engineering Operations Parks and Sustainability

Objective

The *City of Stirling Thoroughfares and Public Places Local Law 2009* prohibits the obstruction of verge areas unless permitted by the City.

This policy sets out the standard conditions under which the City will grant a permit to allow use of verge areas during major works, building or demolition works on adjoining property.

The policy recognises that on one hand, smaller block sizes and constrained development sites mean that space available for materials storage and bins is not always available on site. On the other, the verge area also contains footpaths, services, street trees and other City property that the general public have a right to use. Rubbish from building sites is a source of litter that affects surrounding areas.

Under the *City of Stirling Thoroughfares and Public Places Local Law 2009*, amongst other things it is an offence to obstruct a thoroughfare (which includes the verge area) or store equipment and/or materials in or on it without a permit. It is also an offence to damage any City property in the thoroughfare. The local law provides for a series of penalties and/or prosecution for breaches.

Damage to City property in the verge area such as the road pavement, paving, kerbs, footpaths, drains, street trees, plants and the like is often caused by building and/or demolition works. The policy attempts to prevent this damage by setting out the standard conditions in a permit given to a person to use the verge area during building and/or demolition works.

Applicants are required to lodge an adequate cash bond, and in all instances to pay for any damage that results during the works. Repeat offenders are subject to an on the spot infringement or prosecution.

Scope

This policy applies to any person who wishes to use the verge area during major work on an adjoining property.

If associated with work that requires a building license, the person to whom a building license is issued is responsible to ensure that the verge area is used in accordance with the permit conditions. In all other cases, the permit holder is the responsible person.

The permit is able to be issued at the same time as a building licence where required under the *Local Government (Miscellaneous Provisions) Act 1960*.

A permit must also be obtained where a building licence is not required, but where major works are to take place on an adjoining property that are likely to require use of the verge area for similar purposes such as major landscaping and/or driveway reconstruction or property maintenance.

Policy

Part A – Application for a Permit to Use Verge Area During Works on Adjoining Properties

The City will generally grant a permit to use the verge during works on adjoining properties, except where:

1. Granting the permit would result in an unacceptably high safety risk to others;
2. It is likely that an unacceptable level of damage to City property or other infrastructure would result;
3. Trees are likely to be damaged or removed and a Tree Protection Zone cannot be established;
4. The applicant or persons engaged by the applicant have previously:
 - a. Failed to obtain a permit;
 - b. Consistently failed to comply with permit conditions; or
 - c. Failed to repair damage caused to the satisfaction of the City.

The City will not grant permits for site toilets to be placed on verge areas.

Information required to obtain a permit will vary by site, but in general a responsible party will need to be nominated, the scope of use detailed, other issues such as the location of site offices and/or sheds, request to remove a street tree detailed, and plans of the development that show the entire verge area adjoining it, plus payment of the required application fee and refundable bond as determined by Council from time to time in its annual budget.

Part B – Approval of Permits

Conditions of a permit to use a verge area may vary from site to site, but as a minimum will include the following, which may be varied, added or amended by an authorised officer of the City:

1. Acknowledgement and acceptance by the applicant of the conditions of the permit, including the obligations, responsibilities, limitations and restrictions therein;
2. Where a permit is granted as part of a development application, building or demolition licence, its duration will be for the same period of time as stipulated on those approvals. Where no time period is stipulated or where no building licence is required, the permit will be for 12 months or as otherwise specified on the permit;
3. Where the site is located in a high traffic area or where vehicle access to the site may cause a hazard, the City may require that a temporary crossing be installed or a Traffic Management Plan be submitted.
4. In cases of high pedestrian volume such as locations near schools or shopping areas where a temporary crossing is unsuitable or the scale of work presents a danger to pedestrians, or high traffic volumes exist on the adjoining street, the City may require the applicant to erect a temporary fence around the verge and to redirect pedestrians to a safer route.
5. Where a verge area is not fenced off as a condition of a permit, the permit holder must ensure that the area is kept safe for the public to use. In particular, vehicles and trailers must not block footpaths and will be issued infringements under the City's Parking local law without warning.
6. The permit holder must ensure all redundant crossovers are removed and the verge area reinstated to the its previous condition;
7. Nothing in a permit to use a verge in any way authorises the removal of, or damage to a street tree, unless approval is specifically given in accordance with the 'Street Trees' Policy.
8. Where required, the permit holder must erect and maintain a Tree Protection Zone in accordance with the City's specifications.
9. The permit holder must ensure that rubbish is placed in bulk bins only on the verge area (see below). Loose piles of discarded material and loose rubbish that may litter the surrounding area are NOT permitted on verge areas.
10. The permit holder must ensure that materials, such as sand, soil, cement, and other materials are contained and do not leak or leach into the City's drainage system or otherwise damage the City's infrastructure

11. If not otherwise required by a building license, the permit holder must display on site his/her name and contact details;
12. Nothing in a permit in any way authorises the permit holder to damage infrastructure or property owned by others, such as gas, water supply or sewerage, telephone service, cable services for TV, internet and similar or electrical power. In the event of any damage, the permit holder is required to immediately notify the owner or utility concerned;
13. On receipt of notification by the City of any urgently required repairs or changes to permit conditions to ensure public safety, the permit holder must take all steps to comply with that notice in the time period specified;
14. The permit holder must undertake to repair any damage caused to the City's property in accordance with the City's specifications and requirements;
15. The permit holder must notify the City's Engineering Operations unit by phone on 9345 5888 or Facsimile: (08) 9345 8822 or Email: stirling@stirling.wa.gov.au:
 - a. If an extension to the duration of the permit or variation to its associated conditions is requested;
 - b. Five working days before works on the adjoining property have been completed; and
 - c. When any requested repairs or rectification works have been completed
16. The permit holder agrees to indemnify the City from any claims that may arise from use of the verge area.
17. Temporary or site toilets must not be installed on a verge area.
18. Site offices and sheds to hold building material may only be installed on verges where the applicant can satisfy the City that there are no viable alternate locations. Standard conditions in relation to placing bulk bins, building materials, site offices and materials sheds on verges are:
 - a. They must not be placed in such a way as to obstruct or overhang a footpath, carriageway, access way, or driveway;
 - b. They must be placed on the verge that immediately abuts the property being serviced, or if not permission is obtained from the owner or occupier;
 - c. No sight distance obstruction is caused;
 - d. No damage is caused to any City property in the verge such as a sign, kerb, footpath, street tree or garden maintained by the City;
 - e. No obstruction or damage is caused to a manhole, inspection pit, fire hydrant, water or gas valve, electrical substation, drainage gully, water channel or other service in the verge area for which access may be reasonably required;
 - f. It is not placed on a service in the verge area that is not covered with a trafficable lid;
 - g. Bulk bins must not be placed on a verge more than 48 hours of being used, and are to be removed within 72 hours of being filled;
 - h. Site sheds and/or site offices must not be placed on a verge more than 48 hours before being used on the adjoining site; and
 - i. The verge area is to be cleared of all materials, rubbish, sand and the like and returned to the level before building work commenced or as otherwise approved by the City.

Part C – Appeals

Part 9 of the *Local Government Act 1995* applies, and relates to a decision refusing a permit, giving a notice, or varying a decision. That Part should be referred to, but allows a person to lodge an objection or a request for a review of a decision to a Committee, to Council or the State Administrative Tribunal.

Part D – Enforcement

1. The City will undertake inspections as required to ensure compliance with permit conditions and its Thoroughfares and Public Places Local Law. Frequency will depend on the scale of works undertaken, the risk to the public as assessed by the City, complaints about a particular site, or past performance of a permit holder.
2. Where a verge area is not being used in accordance with the conditions of a permit or local law, the City will issue a notice under its Thoroughfares and Public Places Local Law to the permit holder to rectify the situation in accordance with the timeframe stipulated in the notice.

3. If not complied with, the City may undertake the required works and recover the cost of doing so from the permit holder, including deduction from any bonds held.
4. On the second or any subsequent occasion in involving a particular site or permit holder, as well as a notice to make good any breach of a permit or local law, the City may issue an infringement notice under the Thoroughfares and Public Places Local Law to the permit holder.
5. On the third or any subsequent occasion in involving a particular site or permit holder, as well as a notice to make good any breach of a permit or local law, the City may prosecute for failing to comply with the conditions of a permit issued under its Thoroughfares and Public Places Local Law and any other law that may have been breached.
6. Where a notice has been issued and has not been complied with in the time specified, the City may impound any materials or goods involved in the contravention.
7. The City may also revoke the permit.
8. Vehicles or trailers blocking footpaths may be issued with infringements without warning.
9. Where a verge is being used for storage during construction work on an adjoining property where a building license is not required and a permit is required to use the verge area, the City will request the responsible person to obtain a permit within the time period specified in the request, which would include lodgement of the required bond. If not complied with in the time specified, the City may issue an infringement notice as well as a notice to remove any material stored on the verge.

Definitions

Definitions for most of the terms used in this policy are contained in the *Local Government Act 1995* and the *City of Stirling Thoroughfares and Public Places Local Law 2009*.

City property includes street trees, verge covering (e.g. lawn, mulch and hardstand), verge plants, paths, drainage (including pipes and pits), kerbing ("kerb" includes the edge of a carriageway), street nameplates and signs, street furniture (including plaques, bus seats shelters, stops, etc) and crossovers.

Relevant management practices/documents

The City has other Policies that also apply to use of a verge area such as:

- Crossover;
- Verge Treatments;
- Bulk Bins on Verges; and
- Outdoor Eating Facilities in Public Places.

Legislation/local law requirements

Amongst other things, the *Local Government (Miscellaneous Provisions) Act 1960* provides that:

'377. No materials to be deposited on streets without licence

- (1) No person shall deposit stones, bricks, lime, rubbish, timber, iron, or other materials on a street, way, or other public place, nor make an excavation on land abutting or adjoining a street, way, or other public place, unless authorised to do so by an Act or unless he has first obtained from the local government in whose district the street, way, public place, or land is situated a licence in writing for that purpose, nor unless, in the case of an excavation he has securely fenced off the place where it is to be made from the street, way, or other public place, nor unless he complies with the conditions, if any, of the licence.

Penalty: Maximum penalty, \$5,000 and in addition a maximum daily penalty of \$100 for each day during which the offence continues.

- (2) The local government shall state in the licence the purpose for which and the conditions upon which it is granted, and may grant the licence subject to the condition that the licensee shall erect, for the safety and convenience of the public, such hoardings or fences at such places, and of such form, character, and dimensions as the local government or building surveyor of the local government thinks fit.'

The City of Stirling Thoroughfares and Public Places Local Law 2009 also provides that a permit is required to undertake certain activities in thoroughfares, which includes verges.

Office use only			
Relevant delegations	Not applicable		
Initial Council adoption	Date 3 March 2009	Resolution #	0309/019
Last reviewed	Date 26 May 2020	Resolution #	0520/027
Next review due	Date 2021		