

Ku-ring-gai Council

Private Use of Road Reserves and Nature Strips

Version Number 2

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Private Use of Road Reserves and Nature Strips

Table of Contents

Controlled Document Information	3
Authorisation Details	3
Related Document Information, Standards & References	3
Version History	3
Policy	4
Purpose and Objectives	4
Scope	4
Responsibilities	4
Policy Statement	5
Intent.....	5
Service Authority Access rights.....	5
Reinstatement.....	5
Removal or modification of existing structures or works	6
Works Requirements including Structures and Landscaping.....	6
Existing Encroachments by Permanent Structures onto Road Reserves	6
Exceptions	7
Leasing of Road Reserve.....	7
Purchase of the Road Reserve	7
Figure 1 – Assessment flowchart for review of Structures and Landscaping Works	8
Definitions.....	9

Controlled Document Information

Authorisation Details

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Related Document Information, Standards & References

Related Legislation:	Local Government Act 1993 Roads Act 1993 Roads Transport act 1999 Australian Postal Corporation Act 1989 (cth) Environmental Planning and Assessment Act 1979	SEPP (Infrastructure) 2007 SEPP (Exempt and complying Codes) 2008 Roads Act; S138 – Works and Structures S139 – Nature of Consent S140 – Revocation of consent S142 – Maintenance of Works and Structures
Related Policies (Council & Internal)	Traffic and Transport Policy Acquisition and Divestment of Land Policy 2014	KLEP 2015 KLEP (Local Centres) 2012 Outdoor Dining and Footpath Trading Policy
Related Documents - Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements, etc	Road Closure and Sale Procedures - For the Information of Applicants	
Other References	N/A	N/A

Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	24/03/2009	28/06/2016	Director Operations	Original
2	29/06/2016	N/A	Director Operations	Policy approval process changed addition of Service Authority Access rights outlined.

Policy

Purpose and Objectives

The purpose of this policy is to control the use of private works in the road reserve and nature strips under the *Local Government Act 1993*, the *Roads Act 1993* and/or any other Act.

This policy applies to the whole Ku-ring-gai Local Government Area.

The objectives of this policy are:

1. To permit use of Public Land (dedicated public road reserve) by private property owners on a uniform basis and in compliance with the *Local Government Act 1993*, the *Roads Act 1993*, and current Ku-ring-gai Local Environmental Plans.
2. To provide guidelines and conditions on the permitted use of Council owned assets for private purposes to ensure public safety. This includes safe pedestrian access for all members of the community and the maintenance of safe sight lines for traffic movement that enable property access / egress.
3. To inform the public regarding Service Authorities access and rights over the road reserve that should be considered with planning and use of the Public Land.
4. To reduce Council's exposure to risks associated with private use of public land by formal tenure/occupation through consent to define responsibilities.

Scope

The policy applies to all new and existing structures located on public road reserve, covered under the *Roads Act 1993*, *Ku-ring-gai Local Environmental Plan 2015* and *Ku-ring-gai Local Environmental Plan (Local Centres) 2012*.

Any works that do not satisfy the requirements as 'exempt development' under *State Environmental Planning Policy (Exempt and Complying Codes) 2008* or a Minor Works Assessment will require a Development Application (DA) and are not subject to this Policy.

Responsibilities

As covered under Section A12 (6) of the delegations to the General Manager, the General Manager or his delegate can approve very minor encroachments on the road reserve or nature strip subject to the conditions of this policy being applied.

Policy Statement

Intent

Many property owners prefer to manage Council owned area in front of their residences to a different standard than the service level provided by the Ku-ring-gai Council. Primarily, this is undertaken to enhance the visual appeal of the property by managing their front garden in continuity from their front door to the road or street.

The strip of Council owned land on the road reserve located between the kerb and the property boundary is known as the *nature strip*.

Council permits works, on the nature strip, by the public as long as they are approved under the *Local Government Act 1993 and Roads Act 1993*.

To ensure public access and safety, works are required to maintain the following:

- Pedestrian access along the nature strip (minimum 1.2meters in width) in preference to walking on the roadway, regardless of whether a footpath has been constructed or not;
- Traffic sight line distances;
- Service Authority and Council access for service maintenance and installation;
- Provision for Council Street Tree/s;
- Where a property owner improves the nature strip, the responsibility for ongoing maintenance rests with the property owner. The improvement may be removed when considered to be in an unsafe condition (refer Appendix 1);
- Works must not present any obstacle or any obstruction to the adjoining property owners and/or users of the road reserve. This includes pedestrian access and use by employees or contractors of Australia Post

Service Authority Access rights

Service Authorities have access and rights over the nature strip. The nature strip area is occupied (above or below the ground) by the following:

- Electricity underground/overhead wiring, pits and poles
- Telecommunications wiring, pits and poles
- Gas mains
- Water mains and connections
- Sewer mains and connections
- Council infrastructure - stormwater drainage systems (including the concrete kerbing), footpath street furniture, signage, bus shelters and street trees
- Australia Post mail delivery corridor.

Reinstatement

When any work on the nature strip is altered or removed by a Service Authority, reinstatement will be subject to negotiation between the property owner and the Service Authority.

Where Council action alters or removes a conforming nature strip structure or works, Council will endeavour to restore the area to a reasonable standard.

Removal or modification of existing structures or works

Nature strip works done before the adoption of this policy or following its adoption and is in a manner contrary to the policy, Council may require the works to be removed or modified to Council's satisfaction.

Any such removal or modification shall be at cost to the property owner except where Council deems otherwise.

Works Requirements including Structures and Landscaping

All proposed work not covered by an existing approval, including new encroachments, extension or modification of an existing encroachment, will require the lodgement of a "Private Use of Road Reserves and Nature Strip" application. An application form is available on Council's website or Front Counter at Council Chambers. Standard Conditions for Approval within this form may be varied as required by Council (as Roads Authority) to suit the scope of works.

The property owner/s or their legally appointed representatives must submit applications. Tenants would need to obtain written permission from the property owner/s.

The Application must be accompanied with payment of relevant fees as set out in Council's Fees and Charges, with relevant documentation as listed below:

1. Detailed drawings or structural engineering plans for any permanent or temporary structures
2. Detailed drawings for any hard or soft landscaping
3. In the case of works affecting heritage items or heritage conservation areas, Council will require a "Minor Works to Heritage Items and Properties in a Heritage Conservation Area" form (available on council's website).

This is required to relate the application to the planning process that allows minor works associated with heritage to be carried out without a DA, under Clause 5.10(3) of KLEP2012 (Local Centres) and KLEP2015. If works are considered "Major," the relevant officer will recommend a DA so full investigation including external consultation can be done.

Staff will conduct a review of the application for issuing consent under Section 139 of the *Roads Act 1993* in accordance with the assessment process outlined in **Figure 1**. Any work not satisfying the requirements of the *SEPP (Exempt and Complying Codes) 2008* would require a Development Application. The Roads Reserve application would be returned to the applicant

Existing Encroachments by Permanent Structures onto Road Reserves

Where a permanent structure upon a road reserve is considered a safety concern to the public and is found to be an encroachment constructed without approval since commencement of the *Roads Act 1993*, staff will notify the Ward Councillors of the encroachment.

Ward Councillors have ten (10) working days following notification to request the matter be called to Council for consideration.

Should the Ward Councillor not call the matter to Council, the matter shall be referred to Council's General Manager or his delegate to consider whether the encroachment should be removed or conditions be placed on the adjoining owner with regard to Council's requirements.

Either the General Manager or their delegate shall determine whether to:

- Allow the existing encroachment to remain, at Council's discretion, subject to Council's conditions or;

- Issue an order for the existing encroachment to be removed and restored to Council's satisfaction.

Any decision by Council or the General Manager to take no action does not formalise the encroachment nor does it constrain Council from taking some other action in the future.

It is the encroaching owner's responsibility to provide a survey from a registered surveyor to define the encroachment(s) and the area of the encroachment(s) and to take out any necessary public liability insurances over Council road reserve land.

Council will not sell a portion of the road reserve to permit an encroachment but may consider leasing the land depending on the extent of the encroachment. Any lease of public road shall be subject to the provisions of Part 10, Division 2 – Short Term Leases of Unused Public Roads – Other Road Management Functions of the *Roads Act 1993*.

Exceptions

Permanent structures do not include the installation of facilities or infrastructure for public utility authorities such as the provision of services by telecommunication carriers or utility service providers.

This policy does not permit the parking of vehicles on the road reserve or nature strip and prohibitions relating to this practice are covered under the *Road Transport Act 1999*.

The placement of roadside memorials is covered under Council's Traffic and Transport Policy (available on Council's web site).

Leasing of Road Reserve

Council may require the leasing of a portion of the road reserve for private use for temporary structures only.

In circumstances where an applicant wishes to erect a temporary structure on a portion of a road reserve, the applicant is required to complete an application form and submit the application to Council. The matter will be referred to Council for determination of any leasing arrangements and Conditions of Consent.

Council may consider leasing of the road reserve for existing encroachments of permanent structures.

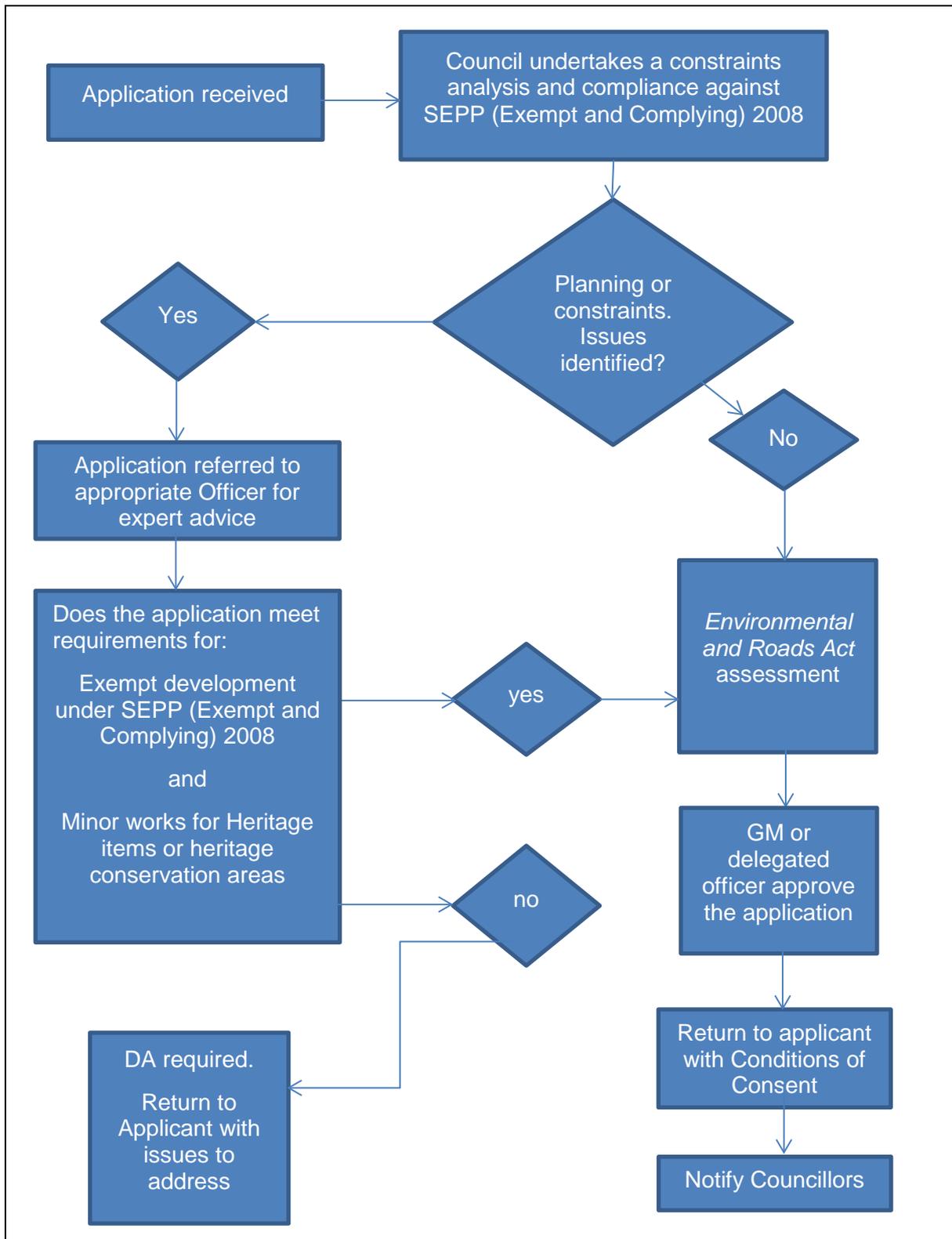
Purchase of the Road Reserve

Council will generally not sell any portion of the road reserve. However, situations may arise where it is in the interests of both Council and the adjoining owner to proceed with the sale of a portion of the road reserve.

Where Council agrees to the sale of a portion of the road reserve, the landowner will be required to submit a road closure application for Council's approval, as directed by the following. These documents are available on Council's website.

- *Acquisition and Divestment of Land Policy 2014*.
- Road Closure and Sale Procedures – for the information of Applicants.

Figure 1 – Assessment flowchart for review of Structures and Landscaping Works



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Definitions

Term / Abbreviation	Definition
Area	Ku-ring-gai Local Government Area
Road Reserve	Any land dedicated or declared as public road including nature strips
Nature Strips	Section of the road reserve between the property boundary and the edge of the road.
Permanent Structure	<p>Any structure made from permanent materials such as reinforced concrete or brickwork.</p> <p>Requires significant structural and site works such as retaining walls or suspended slab</p> <p>Is not easily removed and the disturbed area would be difficult to restore</p> <p>Associated with a Condition of Consent for car parking to allow occupation of the main dwelling on the adjoining land such as:</p> <p>Car stands requiring significant structural and site works</p> <p>Inclinators or stairs providing pedestrian access</p> <p>Fences and retaining walls made from permanent materials such as concrete, brickwork, stonework and steel in excess of 300 mm in height.</p>
Hard and Soft Landscaping Works	<p>Hard Landscaping involves the creation of garden beds in any materials and does not exceed 300 mm in height.</p> <p>Soft landscaping involves the planting of trees and other plants in the nature strip or road reserve.</p>
Temporary Structure	<p>A structure:</p> <p>required for the duration of construction associated with an approved or exempt development activity;</p> <p>does not require significant structural works;</p> <p>can easily be removed and the area reinstated;</p> <p>is not associated with a Condition of Consent for car parking to allow occupation of the main dwelling on the adjoining land;</p> <p>for the purpose of construction of a building requiring hoarding or other structure such as:</p> <ul style="list-style-type: none"> ➤ Hoardings for building works or ➤ temporary rock or ground anchors. <p>Temporary barriers</p>
DA	Development Application under Part 4 of the Environmental Planning and Assessment Act 1979
KLEP2015	Ku-ring-gai Local Environmental Plan 2015
KLEP2012(Local Centres)	Ku-ring-gai Local Environmental Plan (Local Centres) 2012