



Strategic Direction 3
Housing and Land Uses

POLICY P350.14
Use or Closure of Rights-of-Way

Relevant Management Practice
Nil

Relevant Delegation
Delegations DC690 and DM690

Rationale

Historically, the City of South Perth contained a large number of rights-of-way which had been created to facilitate the servicing of backyard toilets and garbage collection. They also provided vehicular access to the rear of adjoining properties for the delivery of solid fuels and the provision of other essential services. In later years, some rights-of-way were used for vehicular access to approved car parking facilities on residential sites, while many others were no longer in use. In December 1991, in response to continuing requests from property owners, the Council resolved to close as many rights-of-way as possible throughout the district. The Council recognised that many of the rights-of-way were not being used for their intended purposes and that unauthorised rubbish dumping had become commonplace. Such rights-of-way were potential fire hazards, were perceived to pose a security risk to the abutting properties, and sometimes presented a visually unattractive appearance. Since 1991, a dedicated closure program has been progressively implemented in relation to rights-of-way not providing essential vehicular access to adjoining properties. As a result of this ongoing program, most of the 'obsolete' rights-of-way within the City have been closed.

In the interests of fostering design flexibility for new residential development projects, the City promotes the retention of rights-of-way for vehicular access to any lots where the right-of-way already provides 'essential' vehicular access to one or more lots. The City also promotes retention of rights-of-way which provide 'essential' pedestrian access by means of a constructed footpath. This Policy explains the City's expectations where a proposed residential development relies on an 'essential' right-of-way for vehicular access.

A small number of rights-of-way do not provide 'essential' vehicular access to any adjoining properties nor 'essential' pedestrian access and are therefore considered to be 'obsolete'. These rights-of-way are generally not paved and drained and do not contain a constructed footpath. Such rights-of-way frequently accumulate rubbish and become fire hazards. They also provide a haven for persons involved in anti-social behaviour. This Policy explains the circumstances under which the Council may support the closure of an 'obsolete' right-of-way.

Policy

1. Status

(a) **Relationship to Town Planning Scheme No. 6**

This Policy is a planning policy prepared, advertised and adopted pursuant to the Deemed Provisions Part 2 Division 2 of the Planning and Development (Local Planning Schemes) Regulations 2015. Under clause 1.5 of Town Planning Scheme No. 6 (TPS6) all planning policies are documents supporting the Scheme.

(b) **Relationship to Residential Design Codes**

This Policy has been prepared pursuant to clause 7.3 of the R-Codes that expressly permits Local Planning Policies which:

- (i) address streetscape or building design;
- (ii) augment the R-Codes by providing additional Design Principles and Deemed-to-comply provisions for any aspect of residential development not provided for in the R-Codes.

2. Objectives

- (a) To ensure that 'essential' rights-of-way which are unpaved at the time of a development application, are upgraded to a sufficient standard in conjunction with the proposed development.
- (b) To minimise the number of vehicle crossovers to a public street where development sites have alternative access via a right-of-way.
- (c) To prevent vehicular access from 'obsolete' rights-of-way to adjoining properties so as to preserve the option of closure, recognising that such rights-of-way present fire, health and security hazards.
- (d) To clarify the circumstances under which the Council may be prepared to support the closure of an 'obsolete' right-of-way.

3. Scope

This Policy applies to any right-of-way (private road) in the City, irrespective of whether it is privately-owned or City-owned, and to any proposed residential development on land adjoining such a right-of-way. The Policy does not apply to any right-of-way held in freehold by the Crown.

In cases where the Council decides to support the closure of a right-of-way, action towards finalisation of the closure is then implemented in accordance with the provisions of the *Land Administration Act* and the State Land Services of the Department for Planning and Infrastructure's *Crown Land Administration and Registration Practice Manual 2003*. This Policy is complementary to those documents.

4. Definitions

essential right-of-way

A right-of-way which is required to be retained because it provides:

- (a) primary vehicular access to any site adjoining the right-of-way;
- (b) vehicular access to any site adjoining the right-of-way where Canning Highway provides the only alternative means of vehicular access to that site;
- (c) service vehicle access to commercial premises; or
- (d) pedestrian access by means of a constructed footpath.

obsolete right-of-way

A right-of-way which is not required to be retained because it does not provide:

- (a) primary vehicular access to any site adjoining the right-of-way;
- (b) vehicular access to any site adjoining the right-of-way where Canning Highway provides the only alternative means of vehicular access to that site;
- (c) service vehicle access to commercial premises; or
- (d) pedestrian access by means of a constructed footpath.

partial closure

The closure of the full width of a right-of-way over part of its length, while retaining the remaining length of the right-of-way.

primary vehicular access

The only vehicular access to any required and City-approved garage, carport or unroofed car parking bay on a site adjoining a right-of-way.

4. Definitions (cont'd)

right-of-way

For the purpose of this Policy, 'right-of-way' has the same meaning as the term 'private road' in the *Land Administration Act 1997*. That Act defines 'private road' as:

"an alley, court, lane, road, street, thoroughfare or yard on alienated land, or a right of way created under section 167A(1) of the Transfer of Land Act 1893, which -

- (a) is not dedicated, whether under a written law or at common law, to use as such by the public; and*
- (b) is shown on a plan or diagram deposited or in an instrument lodged with the Registrar, and which -*
- (c) forms a common access to land, or premises, separately occupied;*
- (d) once formed or was part of a common access to land, or premises, separately occupied, but no longer does so;*
- (e) is accessible from an alley, court, lane, road, street, thoroughfare, yard or public place that is dedicated, whether under a written law or at common law, to use as such by the public; or*
- (f) once was, but is no longer, accessible from an alley, court, lane, road, street, thoroughfare, yard or public place that was dedicated, whether under a written law or at common law, to use as such by the public."*

The term 'right-of-way' does not mean a 'communal street' as defined in the R-Codes.

secondary vehicular access

Vehicular access to a residential site which is not primary vehicular access, but a means of access for parking not required by the R-Codes, or for any other purpose. Secondary vehicular access can be eliminated without denying access to approved parking facilities.

5. Pedestrian access via a right-of-way

Rights-of-way are sometimes used for pedestrian access by members of the local community. The Council recognises the importance of rights-of-way in providing safe and convenient pedestrian access. In cases where a constructed footpath exists within a right-of-way, this facility contributes to the 'essential' nature of the affected right-of-way and therefore the Council would not support the closure of any such right-of-way.

6. Vehicular access via a right-of-way

(a) Primary or secondary vehicular access via essential rights-of-way is permitted

Subject to clauses 6(a) and 6(b) of this Policy, an essential right-of-way may be used to provide vehicular access to a garage, carport or unroofed car parking bay serving a proposed dwelling on a site adjoining the right-of-way.

(b) Primary vehicular access via obsolete rights-of-way is not permitted

Due to the Council's intention to close obsolete rights-of-way, primary vehicular access via an obsolete right-of-way is not permitted.

(c) Temporary secondary vehicular access via obsolete rights-of-way is permitted

An obsolete right-of-way may be used for secondary vehicular access on a temporary basis only, due to the Council's intention to close obsolete rights-of-way. Approval will not be granted for any garage or carport relying upon an obsolete right-of-way for vehicular access.

7. Upgrading and maintenance of essential rights-of-way

(a) Upgrading and maintenance required for primary vehicular access

Where primary vehicular access to the site of proposed residential development is via an essential right-of-way which is not paved at the time of submission of the development application:

- (i) the portion of the right-of-way which adjoins the development site is to be paved, drained, kerbed and maintained by the property owners to a standard sufficient to sustain the loadings of heavy service vehicles and to the specifications of the City's Engineering Infrastructure Department;
- (ii) the property owners are to meet the full cost of all design, construction and maintenance associated with the upgrading works.

(b) Upgrading not required for secondary vehicular access

Where secondary vehicular access to a residential site is gained via a right-of-way, the property owner is not required to pave any portion of the right-of-way.

8. Design guidelines for developments adjoining essential rights-of-way

(a) Any proposed parking bays accessed from an essential right-of-way are to be set back:

- (i) from the right-of-way boundary a sufficient distance to achieve a 6.5 metre reversing depth, but in any case not less than 1.5 metres; and
- (ii) at least 1.5 metres from any side boundary of the development site where that boundary is fenced to a height exceeding 0.75 metres in order to achieve adequate sight lines for motorists.

(b) Each dwelling which has vehicular access from a right-of-way is to be provided with a pedestrian accessway leading from a public street, to the front entry of the dwelling. To provide a visually attractive accessway with sufficient space for deliveries and rubbish disposal, the width is to be 1.5 metres unless the available width is constrained by an existing dwelling. The width of any pedestrian accessway is to be not less than 1.0 metre at any point.

9. Minimising vehicular access from a public street

Deemed-to-comply clause 5.3.5 C5.1 of the R-Codes requires vehicular access to a development site to be provided solely from a right-of-way where available. Alternatively, under Design Principles clause 5.3.5 P5.1, vehicular access may be provided from a public street, subject to the number of crossovers being minimised, and the vehicular access being safe in use and not detracting from the streetscape. Having regard to clause 5.3.5 P5.1, where the development site adjoins an essential right-of-way, the City would be prepared to approve residential development relying on primary vehicular access from a public street to one or more of the required car bays, subject to:

- (a) there being only one crossover from the public street; and
- (b) in the case of a site 12.0 metres wide or less, the crossover being not wider than 4.0 metres.

10. Partial closure of a right-of-way not supported

The partial closure of a right-of-way may cause vehicular access difficulties for visitors to dwellings adjoining the right-of-way, due to the absence of a turning circle at the closed end of the right-of-way. In addition, a partial closure would create a 'dead end' without opportunities for surveillance, thus providing the potential for entrapment. Therefore, the Council would not be prepared to initiate a partial closure.

11. Possible support for closure of obsolete rights-of-way and applicants' responsibilities

- (a) The statutory procedure for closure of a right-of-way is prescribed in the *Land Administration Act*. In addition, the State Land Services of the Department for Planning and Infrastructure has produced the *Crown Land Administration and Registration Practice Manual 2003* which contains detailed information relating to implementation of the closure process. Before the Council would consider action towards possible closure:
- (i) the right-of-way under consideration would need to constitute an obsolete right-of-way; and
 - (ii) the Council would need to receive a petition requesting closure, supported by 75% or more of the owners of the properties adjoining the right-of-way, accompanied by a plan showing a proposed equitable division of the right-of-way land among the adjoining properties.
- (b) If the Council decides to initiate the right-of-way closure procedure, the owners who requested the closure would be required to engage a consultant at their cost to implement all of the subsequent administrative, investigative and reporting procedures.

12. Vehicular access to commercial premises

In conjunction with proposed commercial development, an essential right-of-way may be used to provide the only vehicular access or secondary vehicular access to the development site.

Other in Force Documents

- City of South Perth Town Planning Scheme No. 6
- Deemed Provisions Part 2 Division 2 of the Planning and Development (Local Planning Schemes) Regulations 2015
- Residential Design Codes
- *City of South Perth Standing Orders Local Law 2007* (re petitions: Clause 6.10)
- *Land Administration Act 1997*
- *Land Administration Regulations 1998*
- *Transfer of Land Act 1893*

Other related Policies

- Policy P350.3 'Car Parking Access, Siting and Design'
- Policy P406 'Right-of-Way Maintenance and Development'
- Other Policies within Policy P350 'Residential Design Policy Manual'

Other related information

- City of South Perth Information Sheet 'Requesting closure of a Right-of-Way'
- City of South Perth Information Statement 2008 (re petition pro forma: Schedule 6.4)
- Western Australian Planning Commission Policy No. DC 1.7 'General Road Planning'
- Western Australian Planning Commission Policy No. DC 2.2 'Residential Subdivision'
- Western Australian Planning Commission Policy No. DC 2.6 'Residential Road Planning'
- Western Australian Planning Commission Planning Bulletin No. 33 'Rights-of-Way or Laneways in Established Areas - Guidelines'
- *Crown Land Administration and Registration Practice Manual 2003*. State Land Services, Department for Planning and Infrastructure. (www.dpi.wa.gov.au/crownland/1789.asp)

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24 June 2008

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