

## **6.5 DEVELOPMENTS AND SUBDIVISIONS ABUTTING RIGHTS OF WAY**

### **1. INTRODUCTION**

Where there is a conflict between this policy and other policies this policy shall prevail. The following standards are in addition to the Deemed to Comply Development standards contained in the Residential Design Codes of Western Australia ('R-Codes').

### **2. OBJECTIVES**

- 2.1. To facilitate the improved management of Rights of Way ('ROW');
- 2.2. To promote better urban design by encouraging the use of ROW for vehicle access;
- 2.3. More efficient use of individual sites;
- 2.4. Create unique streetscapes along the ROW through sympathetic building orientation and design;
- 2.5. Maintain existing streetscapes, by minimising the need for and impact of additional garages/carports and paved areas within the street setback area, and better allowing the retention of existing buildings and landscaping;
- 2.6. Support the objectives of the City's Rights of Way Management Strategy; and
- 2.7 To facilitate future widening of ROW.

### **3. APPLICATIONS SUBJECT OF THIS POLICY**

This Policy applies to all developments and subdivisions abutting a ROW, a Crown Reserve for ROW purposes or a dedicated road which was originally created as a ROW. Reference to ROW hereinafter includes ROW, a Crown Reserve for ROW purposes and dedicated laneways that were formerly ROW.

### **4. RELEVANT DOCUMENT**

The City's Developments and Subdivisions Abutting Rights of Way Management Practice provides administrative guidance to the implementation of this Policy.

This policy has been formulated to contribute to the achievement of the objectives of the Rights of Way Management Strategy through special development control standards for developments and subdivisions adjacent to ROW. The intent of the policy reflects the City's management approach to each category of ROW as promulgated in the Strategy.

### **5. RIGHT OF WAY CATEGORIES**

5.1 Each ROW within the City is allocated a 'Category' according to the ROW Category Designation System based on assessment of the relative suitability for use and strategic benefits of the ROW. The policy provisions directly relate to the Category allocation and objectives, which are as follows:

#### **5.1.1 Category 1 - Traffic Management and Commercial ROW**

Located in areas with significant traffic safety / management issues (including the majority of commercial developments capable of utilising ROW for service and/or parking access) or adjoins properties fronting major roads;

**5.1.2 Category 2 - Development Potential ROW**

Located in areas where the majority of abutting lots have infill development potential and the ROW is deemed to have the potential to reduce the negative impacts of this infill development (in terms of streetscape amenity, environmental impact, efficient use of land and traffic management).

**5.1.3 Category 3 - Heritage / Streetscape Benefit ROW**

Located in areas where identified heritage or special streetscape value may be protected and enhanced by the use of ROW for rear access, but where the majority of abutting lots do not have infill development potential.

**5.1.4 Category 4 - Minimal Strategic Benefit ROW**

Lacking the above potential or values, either through strategic location, development status and/or practical limitations to the use of the ROW for access.

**5.1.5 Category 5 - ROW Less Than 5 Metres Wide**

All which are under 5.0m in width (and consequently posing specific difficulties for use for access and future management) or other limitations to the use of the ROW which requires individual assessment and management plan to address the constraints.

**Note:** *Plans showing the location and designated category of ROW are available for viewing at the City and online via 'StirlingMaps' or the 'Rights of way management strategy' project on the City's website [www.stirling.wa.gov.au](http://www.stirling.wa.gov.au). Amendments to ROW categories may occur from time to time as reviews occur or circumstances change.*

5.2 The City is seeking to promote the use of Category 1 and 2 ROW for primary access, the use of Category 3 ROW for secondary access where this facilitates protection of the streetscape, and to discourage further use of Category 4 and 5 ROW, to allow for future closure unless closure has been determined to be impossible or the constraints can be overcome.

5.3 Reference to 'primary access' in this policy means a road or ROW which provides the principal access to the major entry (front door) of a dwelling.

5.4 Reference to 'secondary access' in this policy means a road or ROW which provides access to a dwelling other than the primary access.

## **6. GENERAL PROVISIONS**

The following provisions shall apply to developments and subdivisions abutting all ROW.

6.1. Provide sufficient reversing and manoeuvring area for vehicular access to the satisfaction of the City (as per Australian Standards AS/NZS 2890).

6.2. Provide a minimum 1.5m wide pedestrian / service access to the pre-existing primary street where a development or subdivision uses a ROW for primary access (Refer to 'Service Access' section below).

6.3. Provide a 1.5m x 1.5m visual truncation for sightline to vehicular access via a ROW and any existing vehicle access on an adjacent development to a ROW.

- 6.4. Provide corner truncations for visual sightlines including:
  - 6.4.1 3.0m x 3.0m corner truncation for lots at the intersection of two ROW for ROW at least 5.0m wide;
  - 6.4.2 2.0m x 2.0m corner truncations for lots at the intersection of a ROW at least 5.0m wide and a street; and
  - 6.4.3 Corner truncations to City's satisfaction for ROW less than 5.0m wide.
- 6.5. Corner truncations required in clause 6.4 are to be ceded to the Crown free of costs in the following circumstances:
  - 6.5.1. subdivisions;
  - 6.5.2. the development of a new single house, grouped dwelling or multiple dwelling;
  - 6.5.3 a new commercial or mixed-use development; or
  - 6.5.4 a development or a change of use that will, in the opinion of the City, result in increased traffic in the ROW.
- 6.6 The applicant is to seal and drain the ROW to the satisfaction of the City as required unless otherwise agreed by the City.

## **7. SPECIFIC PROVISIONS**

In addition to the General Provisions, the following provisions also apply to the specific categories of ROW.

### **7.1 Category 1**

#### 7.1.1. Objective

Developments and subdivisions are required to utilise Category 1 ROW for access and contribute to the development of a pleasant streetscape along it.

#### 7.1.2. General

Developments and subdivisions are required to orient to and use the ROW for primary access except where the applicant provides adequate justification, clearly illustrating why use of the ROW does not represent the optimum traffic management option and that the development will not detract from the objectives of providing passive surveillance and creating a pleasant streetscape within the ROW.

#### 7.1.3. Commercial and Mixed Use Development

Commercial and mixed use developments are required to provide lighting in parking accessed from the ROW. Developments providing parking accessed from the ROW will be encouraged and may be required to provide pedestrian access from the parking to the building entrance. Developments providing parking accessed from the ROW will be required to integrate this with parking on abutting commercial properties, wherever possible. Consideration of the impact on the development potential and streetscape or the ROW will be required in location and design of abutting buildings, fencing, bin stores, storage etc. The location of multi-storey car parking adjacent to a ROW is not permitted. Bin stores along ROW with residential land opposite should be screened, well maintained and managed to limit noise and odour emissions, and pests.

#### 7.1.4. Residential

- 7.1.4.1. Residential developments and subdivisions are required to use the ROW for primary access.
- 7.1.4.2. Residential lots on the corner of a ROW and primary street are required to use the ROW for vehicle access and orient to the primary street for primary access.
- 7.1.4.3. Where residential developments and subdivisions abut commercial and mixed use developments across a ROW, applications will be assessed on their merits to ensure that residential amenity is protected and traffic problems are avoided. This may involve relaxation of some or all of the provisions below, including the requirement to orient to the ROW. In particular, where a ROW is dominated by commercial and/or mixed use developments or where the significant majority of abutting lots have no development potential, setbacks in accordance with Category 3 ROW may be considered.
- 7.1.4.4. Where a lot uses a ROW for primary access, the R-Codes provisions relating to primary streets shall apply, except where they conflict with the provisions below. This includes the requirement to ensure adequate surveillance between the dwelling and the ROW, but excepting provisions relating to setbacks from that street. Setbacks are specified below.
- 7.1.4.5. Residential developments utilising a ROW for access are required to provide adequate porch or carport lights.

#### 7.1.5. Setbacks

- 7.1.5.1. All buildings are to be setback from the ROW:
  - 7.1.5.1.1 A minimum of 2.0m at ground floor level;
  - 7.1.5.1.2 A minimum of 3.0m at upper storey level;
  - 7.1.5.1.3 Carports, garages and car-bays to residential developments using a ROW are to be setback a minimum of 5.5m (to allow for two casual visitor parking bays within this setback area as parking is not permitted in the ROW). A reduced setback of 2.0m may be acceptable for multiple dwellings or where primary access to the dwelling is available from the primary street (note: primary access via a pedestrian access leg does not qualify for setback reduction); and
  - 7.1.5.1.4 Carports, garages and car-bays to commercial and mixed use developments are to be setback a minimum of 2.0m;
- 7.1.5.2 All setback provisions from the ROW are to be determined after allowing for any ROW widening requirement from the lot.

- 7.1.5.3 Where a development orients to the ROW, the location of courtyards in the ROW setback will generally not be permitted unless justified on grounds of maximum solar orientation, because of the need for these to have the ability to be adequately fenced and screened.
  - 7.1.5.4 These setbacks apply to all residential, commercial and mixed-use developments. Averaging of setbacks is not permitted. All other setbacks for residential developments are as per the R-Codes. The setback provisions apply to all developments abutting a ROW even if it is not used for access. In case of lots (including lots which have been re-subdivided since the creation of the ROW) abutting more than one ROW or a ROW and a secondary street, the secondary street setbacks specified in the R-Codes apply to the ROW not used for access.
  - 7.1.5.5 Where a residential development on a corner lot has direct frontage to a street, the garage / carport setback to the ROW may be reduced to comply with the secondary street setback provision of the R-Codes, whether or not it orients to the street or the ROW, provided that sufficient manoeuvring space is provided to the City's satisfaction.
  - 7.1.5.6 Setback to shading structures such as pergolas, patios and sails that are open on the 3 sides closest to the ROW may be reduced to a minimum of 1.0m from the ROW where a 2.0m is unreasonable or impossible due to the location of an existing building. In such cases, the roof component must be setback at least 1.0m from the ROW.
- 7.1.6 Landscaping
- 7.1.6.1 Where a development uses a ROW for primary access, a significant component of soft landscaping within the setback to the ROW will be required in addition to the requirements of Planning Policy 6.6 'Landscaping' in order to contribute to the creation of an attractive streetscape.
  - 7.1.6.2 Commercial and mixed use developments, whether utilising the ROW for access or not, are required to provide a significant component of soft landscaping within the ROW setback area in addition to the requirements of Local Planning Policy 6.6 'Landscaping' where the ROW also provides primary access to residential developments.
  - 7.1.6.3 All landscaping within 0.5m of the ROW is to be no more than 0.75m in height and is not to be of a thorny, poisonous or hazardous nature.
- 7.1.7 Fencing & Gates
- 7.1.7.1 Where a development or subdivision is oriented to a ROW for primary access, fencing and retaining walls must be setback a minimum of 0.5m from the ROW boundary unless land has been ceded from the lot for the widening of the ROW or the ROW is at least 6.0m wide.

7.1.7.2 No fencing or gates are to be constructed in front of garages, carports or parking bays in such a fashion as to prohibit casual visitor parking.

#### 7.1.8 Up-Grading of ROW

Developments and subdivisions are required to comply with the relevant construction and/or development contribution requirements of the Scheme and the Development Contribution Plan for Rights of Way Improvement Works.

#### 7.1.9 Widening of ROW

7.1.9.1 The City is seeking to widen Rights of Way to which it has committed to upgrading to 6.0m. The City will seek to have lots abutting the Category 1 ROW transfer an appropriate widening (in the majority of cases, 0.5m) along the ROW boundary to the City free of cost as a condition of development or subdivision approval in the following circumstances:

7.1.9.1.1 Subdivisions;

7.1.9.1.2 The development of a new single house, grouped dwelling or multiple dwelling;

7.1.9.1.3 The development of a new commercial or mixed use development; or

7.1.9.1.4 A development or a change of use that will, in the opinion of the City, result in increased traffic in the ROW.

7.1.9.2 Notwithstanding that whilst widening requirements are generally divided equally between properties abutting both sides of the laneway, commercial developments or subdivisions may be required to cede the full width of land required for widening given the traffic generating potential and the benefit the land will derive from using the ROW.

### 7.2 **Category 2**

#### 7.2.1 Objectives

Developments and subdivisions are generally required to orient to and use Category 2 ROW for primary access and not to detract from the long term objectives of good traffic management, passive surveillance and creating a pleasant streetscape along the ROW.

#### 7.2.2 General

7.2.2.1 Developments and subdivisions not orienting to the ROW for primary access must provide justification for the selected orientation and demonstrate design features that support and address the policy objectives for Category 2 ROWs, including:

7.2.2.1.1 Visually permeable feature fence setback 0.5m from the ROW;

7.2.2.1.2 At least one major opening in one or more habitable room facing a ROW located not more than 5.0m from the ROW;

7.2.2.1.3 Pedestrian access to the ROW; or

7.2.2.1.4 Balcony with line of vision to the ROW.



7.2.2.2 Residential lots on the corner of a ROW and primary street are required to use the ROW for vehicle access and orient to the primary street for primary access.

7.2.2.3 Where a development uses a ROW for primary access, the R-Codes provisions relating to primary streets shall apply, except where they conflict with the provisions below. This includes the requirement to ensure adequate surveillance between the dwelling and the ROW, but excepting provisions relating to setbacks from that street.

Setbacks are specified below.

7.2.2.4 Residential developments utilising a ROW for access are required to provide adequate porch or carport lights.

### 7.2.3 Setbacks

7.2.3.1 buildings are to be setback from the ROW:

7.2.3.1.1 Minimum of 2.0m at ground floor level;

7.2.3.1.2 Minimum of 3.0m at upper storey level, and

7.2.3.1.3 Carports, garages and car-bays to using a ROW are to be setback a minimum of 5.5m (to allow for two casual visitor parking bays within this setback area as parking is not permitted in the ROW). A reduced setback of 2.0m may be acceptable for multiple dwellings or where primary access to the dwelling is available from the primary street (note: primary access via a pedestrian access leg does not qualify for setback reduction).

7.2.3.2 Where a development orients to the ROW, the location of courtyards in the ROW setback will generally not be permitted unless justified on grounds of maximum solar orientation, because of the need for these to have the ability to be adequately fenced and screened.

7.2.3.3 These setbacks apply to all residential, commercial and mixed-use developments. Averaging of setbacks is not permitted. All other setbacks for residential developments are as per the R-Codes. The setback provisions apply to all developments abutting a ROW even if it is not used for access. In case of lots (including lots which have been re-subdivided since the creation of the ROW) abutting more than one ROW or a ROW and a secondary street, the secondary street setbacks specified in the R-Codes apply to the ROW not used for access.

7.2.3.4 Where a residential development on a corner lot has direct frontage to a street, the garage / carport setback to the ROW may be reduced to comply with the secondary street setback provision of the R-Codes, whether or not it orients to the street or the ROW, provided that sufficient manoeuvring space is provided to the City's satisfaction.

- 7.2.3.5 Setback to shading structures such as pergolas, patios and sails that are open on the 3 sides closest to the ROW may be reduced to a minimum of 1.0m from the ROW where a 2.0m is unreasonable or impossible due to the location of an existing building. In such cases, the roof component must be setback at least 1.0m from the ROW.
- 7.2.3.6 Garages and outbuildings abutting but not opening onto a ROW are discouraged. However, where the City recognises that they are necessary because no other possible location exists and a 2.0m setback is unreasonable or impossible, a reduced setback of 0.50 metres *may* be permitted. In this case, the design of the building walls must be visually attractive and in keeping with the building style and materials of the house and must comply with the provisions of the Building Code of Australia for a parapet wall (to allow for the option of future widening). This concession will only be applied in exceptional circumstances.

#### 7.2.4 Landscaping

- 7.2.4.1 Where a development uses a ROW for primary access, a significant component of soft landscaping within the setback to the ROW will be required in addition to the requirements of Planning Policy 6.6 'Landscaping' in order to contribute to the creation of an attractive streetscape.
- 7.2.4.2 All landscaping within 0.5m of the ROW is to be no more than 0.75m in height and is not to be of a thorny, poisonous or hazardous nature.

#### 7.2.5 Fencing & Gates

- 7.2.5.1 Where a development or subdivision is oriented to a ROW for primary access, fencing and retaining walls must be setback a minimum of 0.5m from the ROW boundary unless land has been ceded from the lot for the widening of the ROW or the ROW is at least 6.0m wide.
- 7.2.5.2 No fencing or gates are to be constructed in front of garages, carports or parking bays in such a fashion as to prohibit casual visitor parking.

#### 7.2.6 Up-Grading of ROW

Developments and subdivisions are required to comply with the relevant construction and/or development contribution requirements of the Scheme and the Development Contribution Plan for Rights of Way Improvement Works.



### **7.3 Category 3**

#### **7.3.1 Objective**

Developments abutting a Category 3 ROW are required whenever possible to use the ROW for secondary access or demonstrate that their access and parking proposal will not have a negative impact on the streetscape of the primary street. Use of the ROW for primary access will be considered on its merits but is generally only encouraged if it facilitates the retention of an existing dwelling or it is not located far from street access.

#### **7.3.2 General**

Residential developments utilising a ROW for access are required to provide adequate porch or carport light, preferably sensor activated.

#### **7.3.3 Setbacks**

7.3.3.1 All buildings to be setback as per the R-Codes, to a minimum of 1.0m (or 0.5m for outbuildings or very small intrusions constructed to parapet standard, where no other possible location exists and a 1.0m setback is unreasonable or impossible).

7.3.3.2 Where primary access has been permitted, all buildings are to be setback from the ROW:

7.3.3.2.1 Minimum of 2.0m at ground floor level;

7.3.3.2.2 Minimum of 3.0m at upper storey level;

7.3.3.2.3 Carports, garages and car-bays using a ROW are to be setback a minimum of 5.5m (to allow for casual visitor parking within the setback area as parking is not permitted in the ROW); and

7.3.3.2.4 These setbacks apply to both single houses and strata developments (grouped and multiple dwellings). Averaging of setbacks is not permitted. All other setbacks are as per the R-Codes.

#### **7.3.4 Fencing**

Where primary access has been permitted, no fencing or gates are to be constructed in front of garages, carports or parking bays in such a fashion as to prohibit casual visitor parking.

#### **7.3.5 Up-Grading of ROW**

Developments and subdivisions are required to comply with the relevant construction and/or development contribution requirements of the Scheme and the Development Contribution Plan for Rights of Way Improvement Works.

## **7.4 Category 4 & 5**

### **7.4.1 Objective**

- 7.4.1.1 Developments and subdivisions abutting Category 4 & 5 ROW are discouraged from using the ROW for access and access may be refused unless closure has been determined to be impossible in the long term and the proponent can show that their use of the ROW is vital to their development and in keeping with the neighbouring properties.
- 7.4.1.2 Developments and subdivisions abutting Category 5 ROW and proposing use of the ROW will be considered if the access constraints can be overcome, such as through the widening of the ROW, and where the access to the ROW is proposed within one lot of street access point.
- 7.4.1.3 The City does not intend to upgrade nor dedicate Category 4 and 5 ROW for management as public roads. Where closure of these ROWs cannot be achieved, the City will progressively arrange for their conversion into Crown ROW reserves to enable management by the City as unsealed lanes as funding permits.

### **7.4.2 General**

Residential developments utilising a ROW for access are required to provide adequate porch or carport light, preferably sensor activated.

### **7.4.3 Setbacks**

- 7.4.3.1 All buildings to be setback in accordance with the R-Codes.
- 7.4.3.2 Where primary access has been permitted, all buildings are to be setback from the ROW:
  - 7.4.3.2.1 Minimum of 2.0m at ground floor level;
  - 7.4.3.2.2 Minimum of 3.0m at upper storey level;
  - 7.4.3.2.3 Carports, garages and car-bays using a ROW are to provide sufficient manoeuvring area to the opposite property boundary plus an additional 5.5 metres (to allow for casual visitor parking as parking is not permitted in the ROW); and
  - 7.4.3.2.4 Averaging of setbacks is not permitted.

### **7.4.4 Fencing**

Where primary access has been permitted, no fencing or gates are to be constructed in front of garages, carports or parking bays in such a fashion as to prohibit casual visitor parking.

### **7.4.5 Up-Grading of ROW**

Where primary access has been permitted, the applicant is required to seal and drain that section of the ROW from the property to the nearest public street, to the satisfaction of the City.

## **8. SERVICE ACCESS**

- 8.1. Notwithstanding whether a ROW has been dedicated or not, adequate provision for service access and rubbish collection must be made. In most instances, where a development or subdivision utilises a ROW for primary access, this is required through provision of a 1.5m wide pedestrian access leg to the street.
- 8.2. Council may waive this requirement where all the following conditions are met:
- 8.2.1. The ROW is dedicated and sealed in its length;
  - 8.2.2. The ROW is at least 5.0m wide;
  - 8.2.3. The ROW has direct vehicular access to a normal public street at both ends (ie it is not at a 'T junction' with another ROW or a dead end) unless the walking distance from the development (or lot accessed from the ROW) to the nearest full-width public street is not more than if the pedestrian access leg was provided; and
  - 8.2.4. The ROW is less than 100m long unless the walking distance from the development (or lot accessed from the ROW) to the nearest full-width public street is not more than if the pedestrian access leg was provided.
- 8.3. Reduction in the width of the pedestrian access leg to 1.0m may only be considered where it is required to allow the retention of an existing house.

## **9. VARIATIONS**

Variations to this policy will be assessed against the objectives of this policy.

## **10. LIST OF DEFINED TERMS**

**Feature fence** means a fence constructed of materials other than fibro-cement, corrugated sheets, metal deck, flat sheet metal, concrete slot-in, untreated and undressed timber, chainmesh and unfinished utility bricks.

**Major opening** has the same meaning as defined in the R-Codes.

**Mixed use development** has the same meaning as defined in the R-Codes.

**Right of Way Management Strategy** means the City of Stirling Rights of Way Management Strategy document adopted by Council on 10 November 2009.

**ROW** means a laneway or private street for vehicular purposes and includes Crown Reserves for right of way purposes and dedicated public laneways that were formerly rights of way.

**OFFICE USE ONLY:**

**Local Planning Scheme No.3 – Local Planning Policy History:**

<b>Action</b>	<b>Resolution Number</b>	<b>Effective Date</b>
Modified	0413/044	21 May 2013
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