

## COUNCIL POLICY NO: 027

<b>Responsible Directorate</b>	Planning and Development
<b>Responsible Section</b>	Regulatory Services
<b>Responsible Officer</b>	Manager Regulatory Services

### OBJECTIVE:

1. To ensure that all major commercial, industrial, large residential development projects and any other developments which the Town considers appropriate, in the Town of Cambridge are appropriately managed, in the interest of safety, health and amenity of all residents, property and the community.
2. To acknowledge responsibilities and provide guidance to builders and developers as to their important role in the effective management of excavation, demolition work and building work.
3. To provide a framework to ensure that commercial, industrial, or large residential development projects are appropriately managed to minimise:-
  - (a) any adverse impact on adjacent properties and their occupants;
  - (b) any adverse impact on traffic and/or the environment in the surrounding area; and
  - (c) the likelihood of damage to local government property which may require remediation, reinstatement of rectification works, and the likelihood of damage to street trees which may require repair or replacement.

### SCOPE:

This policy applies to all Directorates of the Town of Cambridge.

### POLICY STATEMENT:

#### 1. Requirement of Construction Management Plans

- 1.1 The Town requires careful management of major commercial, industrial, or large residential development projects and any other developments which the Town considers appropriate, within the Town.
- 1.2 To ensure that appropriate consideration is given to the planning and on-going management of commercial, industrial, and large residential development projects (and any other developments which the Town considers appropriate), the Town will ensure that builders and/or developers are required to submit a Construction Management Plan to the Town for approval, for all commercial, industrial and large residential development projects (and any other developments for which the Town considers such a plan appropriate).
- 1.3 The requirement for a CMP may be specifically stated in the planning approval for a site, or otherwise required by the Town, depending upon the presence of:-
  - (a) Basement excavations;
  - (b) Demolition of more than two (2) storeys;
  - (c) External works with a value greater than \$1 million;
  - (d) Where traffic or pedestrian management measures are required;

- (e) Where there is a likelihood of damage to local government property; and
- (f) Any other case where the Town considers that a CMP should be provided due to the nature of the work or locality or where the amenity of the area is likely to be disrupted or adversely affected.

The need for a CMP will depend on the nature of work, likelihood of disruptions, impact on local amenity, dangers or risks involved, traffic management or any other relevant issue required to be addressed under the Planning Approval.

1.4 The Construction Management Plan must be approved by the Town prior to the earliest to occur of the following in relation to the development site:-

- (a) the submission of an application for a building permit or demolition permit under the *Building Act 2011*; and
- (b) the commencement of any development.

1.5 The Town will ensure that builders and developers must comply with the Construction Management Plan as approved by the Town at all times during the development.

1.6 To give effect to the above, the Town will usually impose the following conditions (or conditions of a similar nature) on development approvals for all commercial, industrial, or large residential development projects (and any other developments for which the Town considers the imposition of such conditions to be appropriate):-

*“1. Prior to the submission of an application for a building permit or a demolition permit, or the commencement of development, whichever is earlier, a Construction Management Plan must be submitted to, and approved by, the Town. The Construction Management Plan must address the following issues, where applicable:-*

- (a) public safety and amenity;
- (b) site plan and security;
- (c) contact details of essential site personnel, construction period and operating hours;
- (d) community information, consultation and complaints Management Plan;
- (e) noise, vibration, air and dust management;
- (f) dilapidation reports of nearby properties;
- (g) traffic, access and parking management;
- (h) waste management and materials re-use;
- (i) earthworks, excavation, land retention/piling and associated matters;
- (j) dewatering, stormwater and sediment control;
- (k) street tree management and protection;
- (l) asbestos removal management plan;
- (m) encroachments
- (n) temporary ground anchors; and
- (o) any other matters deemed appropriate by the Town.

*2. The Construction Management Plan as approved by the Town must be complied with at all times during development.”*

1.7 See also below at Section 3 of this Policy regarding the usual condition relating to Secure Sums.

- 1.8 Not all developments are the same, and the Town must ensure that it deals with each development application on its merits. Therefore the Town will not simply impose conditions in the precise terms set out in paragraph 1.6 of this Policy in all cases, but rather will impose conditions that are relevant to the particular development application under consideration.
- 1.9 To ensure ongoing compliance with the Construction Management Plan, it is important that a condition in the form of standard condition 2 (at clause 1.6 of this Policy) is imposed.

## 2. Content of Construction Management Plans

- 2.1 The Construction Management Plan will deal with the management of the demolition, excavation and construction processes, with particular emphasis on the issues set out in the standard condition at paragraph 0 of this Policy and any other requirements set out in the actual condition imposed on the relevant development approval.
- 2.2 A pro-forma **Construction Management Plan Guideline** and **Application Form** will be made available to guide developers and builders in the preparation of Construction Management Plans.
- 2.3 Approved Construction Management Plans will be made available for inspection by members of the public at the Town's Administration and Civic Centre and on the Town's website and can be distributed by mail, email, upon request.

## 3. Payment of Secure Sums:

- 3.1 The Town requires careful management of the risk of developments causing damage to local government property and street trees. Damage caused by developments may require remediation, reinstatement or rectification works with respect to local government property (**Remediation Works**) to be undertaken by the Town.
- 3.2 To ensure that the risk of developments causing damage to local government property and street trees is adequately managed, the Town may require the payment of security moneys (**Secure Sums**), along with the relevant administration fee, for the following purposes:-
  - (a) in the event that Remediation Works are required, as a result of the development; and
  - (b) for any street tree which may be affected by the development, in the event that repair or replacement of street trees is required, as a result of the development.
- 3.3 The Secure Sums must be paid to the Town, prior to the earliest to occur of the following in relation to the development site:-
  - (a) the submission of an application for a building permit or demolition permit under the *Building Act 2011*; and
  - (b) the commencement of any development.
- 3.4 The Secure Sums will be paid into a separate account established by the Town specifically for this purpose.

3.5 To give effect to the above, the Town will usually impose the following condition (or a condition of a similar nature) on approvals for any developments which the Town considers appropriate:-

1 *Prior to the submission of an application for a building permit or a demolition permit, or the commencement of development, whichever is earlier, the following secure sum (including the appropriate administration fee) must be paid to the Town:-*

(a) **[insert amount]**, *in the event that any remediation, reinstatement or rectification works is required with respect to any local government property, as a result of the development; and*

(b) **[insert amount]**, *for any street tree which may be affected by the development, in the event that repair or replacement of street trees is required, as a result of the development.*

3.6 The appropriate amount of Secure Sums for various developments is set out in the Annual Budget schedule of fees and charges (as amended).

#### Remediation Works:

3.7 When the Town is considering imposing a condition requiring Secure Sums for Remediation Works on a development approval, it will consider the total value of the development itself.

3.8 If the Town determines that Remediation Works are required, as a result of the development, the Town can serve a notice in accordance with the *Town of Cambridge Local Government and Public Property Local Law 2017* on the applicant, requiring it to carry out Remediation Works within a period of time specified in the notice.

3.9 If the Remediation Works are not carried within the period of time specified in the notice, the Town may then carry out the Remediation Works itself, and apply the proceeds of the Secure Sums for Remediation Works to meet the costs of these works.

3.10 If the Town, in undertaking the Remediation Works, incurs any costs additional to the Secure Sums for Remediation Works, the Town should require that the applicant pay to the Town these additional costs.

#### **4. Street trees and Tree Protection Zones:**

4.1 When the Town is considering imposing a condition requiring Secure Sums for street trees on a development approval, it will consider the:-

- (a) height of each tree;
- (b) condition of each tree;
- (c) number of street trees which may be affected by the development; and
- (d) species and significance/rarity/heritage of each tree.

The amount of Secure Sums required for street trees will be set out in the annual budget schedule of fees and charges (As amended)

4.2 If the development causes any damage to any street tree and following a 14 day notice period, the Town can apply the proceeds of the Secure Sums for street trees to meet the costs of any repair or replacement of a street tree.

- 4.3 A tree protection zone is to be established around the trunk of the tree. This tree protection zone shall include a temporary barricade/fence of at least 2metre X 2metre, erected around the tree to protect the root zone and tree during development construction works.( preferably with a tree protection zone sign) - **Refer diagram below.**
- 4.4 Building materials, building rubble and/or debris shall not be placed or stored against the barricade or within the tree protection zone.
- 4.5 The use of appropriate sized machinery is to occur so that contact with the upper canopy of a street tree does not occur at any time. Any branches requiring removal for clearances to facilitate the development works shall only be undertaken by a qualified Arborist or Town approved Officer, after written approval from the Town of Cambridge.
- 4.6 In the event that current existing irrigation on the verge is to be removed or altered, a temporary and/or supplementary watering program may need to be implemented.
- 4.7 All building contractors engaged on the development are to be made aware of the importance of protecting the Town's street tree, and that any damages occurring to the tree, wilful or otherwise will be subject to prosecution under the Town of Cambridge *Local Government and Public Property Local Law 2017.*

Verge street trees shall be retained, however may be removed only after receiving approval from the Town in accordance with relevant policies (Policy 098 and 100)

**Examples of Tree Protection Zone barricade and mulched saucer:**



Typical Verge street tree protection barricade/fencing - with signage.



Typical mulching requirement.

## 5. Enforcement and Penalties

- 5.1 If a condition requiring a Construction Management Plan and/or Secure Sums has been imposed on a development approval, the Town will not assess any applications for a building permit or demolition permit until such time as a Construction Management Plan has been submitted to and approved by the Town, and/or the Secure Sums have been paid to the Town.
- 5.2 If a condition requiring a Construction Management Plan and/or Secure Sums has been imposed on a development approval, and the developer/builder:-
- a) commences development before a Construction Management Plan has been submitted to and approved by the Town, and/or Secure Sums paid to the Town; or
  - b) does not comply with any requirement of the Construction Management Plan as approved by the Town at any time during development;

the developer/builder will have carried out development otherwise than in accordance with a condition of development approval. Certain enforcement options are available to the Town under the *Planning and Development Act 2005 (WA)* (**P&D Act**), including but not limited to the following:-

- (a) issuing a Planning Infringement Notice (\$500) for any minor breaches;
- (b) issuing a written direction to stop the development for any major breaches; and/or
- (c) prosecuting the developer/builder for carrying out development otherwise than in accordance with the conditions of the development approval.

### Issuing a written Direction to stop development:

- 5.3 The Town can issue a written direction to the person undertaking development to stop, and not recommence, that development, under section 214(2) of the P&D Act.
- 5.4 A person who fails to comply with such a direction commits an offence under section 214(7) of the P&D Act, and the Town can prosecute that person in the Magistrates Court.
- 5.5 The maximum penalty for such an offence is a fine of \$200,000 (for an individual; more for a corporation), and in the case of a continuing offence, a further maximum

fine of \$25,000 (for an individual) for each day during which the offence continues, under section 223 of the P&D Act.

- 5.6 If the offender is a corporation, the maximum penalties are multiplied by five (under section 40(5) of the *Sentencing Act 1995 (WA)*). That is, the maximum penalty for the offence is a fine of \$1,000,000, and in the case of a continuing offence, a further maximum fine of \$125,000 for each day during which the offence continues.

Direct prosecution:

- 5.7 Even without issuing a written direction, the Town can prosecute the developer/builder for carrying out development otherwise than in accordance with a condition of development approval, which is an offence under section 218(c) of the P&D Act.

- 5.8 The maximum penalties for such an offence are the same as outlined above in Clauses 4.5 and 4.6.

**6. Redress Scheme - *Building Services (Complaint Resolution and Administration) Act 2011***

- 6.1 The WA Building Commission provides a redress scheme for neighbours that are affected by faulty workmanship. This scheme is legislated under the *Building Services (Complaint Resolution and Administration) Act 2011* and is not adjudicated by the local government.

- 6.2 The Town currently refers neighbours who have complaints regarding registered builders to the Building Commission to investigate their faulty or unsatisfactory workmanship over any boundary complaints. Applicants do not require legal representation in Building Commission dispute resolution processes and costs can be awarded to the aggrieved party to undertake rectification works. There is a small fee to lodge an initial complaint.

If the complaint is accepted, the rest of the process is free for the complainant and respondent.

This legislation is intended to provide a process that is quicker and more efficient than litigation.

**DEFINITIONS:**

Definitions are taken as those detailed in the *Local Government Act 1995* and associated legislation.

In this Policy, the following words have the following meanings:-

**'building work'** has the same meaning as under the *Building Act 2011 (WA)*, being:-

- “(a) *the construction, erection, assembly or placement of a building or an incidental structure; or*
- (b) the renovation, alteration, extension, improvement or repair of a building or an incidental structure; or*
- (c) the assembly, reassembly or securing of a relocated building or a relocated incidental structure; or*
- (d) the changing of ground levels of land for the purposes of work of a kind mentioned in paragraph (a), (b) or (c) to an extent that could adversely affect land beyond its boundaries; or*
- (e) site work on any land for the purposes of, or required because of, work of a kind mentioned in —*

- (i) paragraph (a), (b), (c) or (d); or
- (ii) paragraph (a) or (b) of the definition of demolition work;  
or
- (f) other prescribed work,

*but does not include work of a kind prescribed for the purposes of this definition as not being building work;”*

**‘demolition work’** has the same meaning as under the *Building Act 2011 (WA)*, being:-

- “(a) the demolition, dismantling or removal of a building or an incidental structure; or*
- (b) the changing of ground levels for the purposes of work of a kind mentioned in paragraph (a) to an extent that could adversely affect land owned by a person other than an owner of the land on which the building or incidental structure that is the subject of the demolition work is located; or*
- (c) other prescribed work,*

*but does not include work of a kind prescribed for the purposes of this definition as not being demolition work;”*

**‘development’** has the same meaning as under the *Planning and Development Act 2005 (WA)*, being:

*“the development or use of any land, including –*

- (a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
- (b) the carrying out on the land of any excavation or other works;*
- (c) in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, any act or thing that –*
  - (i) is likely to change the character of that place or the external appearance of any building; or*
  - (ii) would constitute an irreversible alteration of the fabric of any building;”*

**‘local government property’** has the same meaning as under the *Local Government Act 1995 (WA)*, being:

*“means anything, whether land or not, that belongs to, or is vested in, or under the care control or management of, the local government.”*

**‘Secure Sum’** has the meaning in the *Town of Cambridge Local Government and Public Property Local Law 2017*, being:- *“a bond”*

Document Control	
<b>Office Use Only:</b>	
<b>Previous Policy No</b>	Policy No.4.1.2
<b>Statutory Legislation and Compliance</b>	<i>Local Government Act 1995; Building Act 2011; Planning and Development Act 2005</i>
<b>Related Documents/Legislation</b>	<i>Building Services (Complaint Resolution and Administration) Act 2001;</i>
<b>Date of Adoption by Council</b>	Council Meeting – 15 September 2015
<b>Date Reviewed/Amended</b>	
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