

AWNINGS OR OTHER ATTACHMENTS OVER ROADS

Purpose

The purpose of this Newsflash is to clarify the requirements relating to the erection of awnings or other attachments over roads.

Responsibilities of Certifier

Prior to a private certifier issuing a development permit for building work including awnings or other attachments over roads, a certifier must ensure -

- the owner's written consent for the development has been obtained (IPA Section 3.2.1(3)(a)(ii));
- all necessary development permits are effective for other assessable development related to the building work (IPA Section 5.3.5(4)(a));
- all necessary preliminary approvals are effective for any aspects of the building work assessable under the planning scheme (IPA Section 5.3.5(4)(b)); and
- the building work complies with the Standard Building Regulation (SBR Section 4).

Owner's Consent

Land which is dedicated to public use as a road (refer definition of 'road' in IPA Schedule 10) is owned by the State. The consent of the Department of Natural Resources (DNR) as the owner of the land, is necessary under the IPA for all awnings or other attachments over roads. The local District Officer of the DNR can be contacted if more information is required.

Under the Land Act, which is administered by the DNR, spaces above or below roads can be leased. If the purpose of an awning or other attachment is to provide a public benefit (e.g. for shelter) then it is likely no lease would be required. But if the covered footpath space is to be used for commercial purposes (e.g. a sidewalk café with fixed improvements or a balcony restaurant) then a road closure under the Land Act would be required and a subsequent tenure issued.

Compliance with Planning Scheme

Local government may regulate development above, on, or below roads through planning schemes under the IPA. Planning schemes may regulate matters such as the 'material change of use' of a premises (e.g. the start of a new sidewalk café) and contain specific requirements for 'building work' for awnings or other structures in addition to those determined by the BCA.



A planning scheme may categorise these aspects of development as assessable development. If so, a private certifier must ensure development approvals are effective for these aspects before issuing an approval for the building work.

Compliance with SBR

The carrying out of most building work, including the erection of an awning or other attachment over a road, is deemed assessable development under the Standard Building Regulation (SBR Section 4). Whilst there are no specific provisions catering for such structures in the SBR, building certifiers must ensure the relevant requirements of the BCA are satisfied.

Although the previous prescriptive requirements of the BCA for awnings, balconies or other attachments have been removed, the general structural requirements of Part B and the normal ceiling height requirements of Part F need to be satisfied. For example, BCA Clause BP1.1 requires a building or structure to be capable of sustaining the most adverse combination of loads to which it is likely to be subjected.

Therefore, if an awning or other attachment is to be supported by posts on the footpath, consideration would need to be given to the risk of the posts being dislodged or removed by vehicle impact. It is common practice for awnings or other attachments to be cantilevered from the main building and for any posts close to the roadway desired as a cosmetic feature, to be non-loadbearing.

Compliance with the Transport Infrastructure Act

The approval of the Department of Main Roads (DMR) for awnings over state controlled roads may be required under Section 47 of the *Transport Infrastructure Act 1994*. DMR sets standards to ensure awnings or other attachments over footpaths do not compromise vehicles lawfully using roads. Matters such as structural support, set-backs from kerbs, clear heights above roadways and cantilevering need to be considered. Eventually the process for obtaining DMR's approval of these structures will be integrated into the IDAS process.

Compliance with Local Laws

Roads which are not State controlled roads fall under the general control of local governments under the *Local Government Act 1993*. Local governments may also regulate the use and development of roads through local laws under this Act.

If an aspect of a development is regulated by a local law, compliance with that law is binding on the owner (e.g. there may be heritage character controls on the design of the structure). Local laws may also deal with non-development matters, perhaps the placement of tables and pedestrian movement relative to a sidewalk café. Presently, there are local laws that existed prior to the commencement of the IPA that include development matters.

Non-local government infrastructure providers such as Telstra and Energex are also concerned to ensure their services are not unduly compromised by such structures. If there are services in the space above or the ground below the footpath, the applicant should be advised to contact the owner of those services.

Responsibilities of Applicants

Compliance with the *Transport Infrastructure Act 1994*, local laws and the utility service provider requirements are not assessments integrated in the IDAS that a private certifier must await completion. However, it would be prudent for the applicant to be advised of these requirements and for the work approved by the certifier to comply with these requirements

Please contact Mr Mike Harris on (07) 323 71703 should you require further information on this matter.