

Model Agreement for Local Councils and Utility/Service Providers

Towards Cohesive Management
of
Infrastructure Planning and Works
within
Council Road Reservations

Prepared by:
NSW Streets Opening Conference

August 1999

Introductory Remarks

In recent years there have been significant changes in the operational environments of both utility/service providers and local councils. These changes have increased the need for us to work harder at developing cohesive procedures to meet the needs of our customers and ratepayers. This Model Agreement has been prepared to promote and facilitate best practice working arrangements between utility/service providers and local councils in matters of mutual interest related to the provision of utility/services infrastructure within council road reservations.

Ray McNally
Chairperson
NSW Streets Opening Conference

September 1999

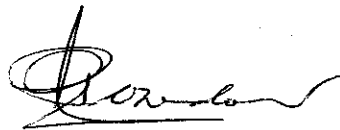
Agreement

Duly signed by:



President
Local Government Association of NSW

Date: 23/8/99



President
Shires Association of NSW

Date: 23.08.99.



Chairperson
NSW Streets Opening Conference

Date: 23.8.99

Acknowledgments

This Model Agreement has been prepared by a Steering Committee of the NSW Streets Opening Conference comprising representatives of water, electricity, gas and telecommunications utility/service providers, the Local Government and Shires Associations (LGSA) and the Institute of Municipal Engineering Australia (IMEA). The project consultant was P&A Walsh Consulting Pty Ltd.

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1. The Setting for the Model Agreement

This Agreement seeks to promote cooperation and good practice in the interaction between local councils and utility/service providers with regard to works within the road reservation. The Agreement is founded on the premise that coming to an understanding on cooperative processes provides the key to better meeting the objectives of the communities to which both councils and utility/service providers provide their respective services.

Functions of the Road Reserve

It is recognised that the road reservation exists to carry out a number of functions fundamental to the basic safety, convenience and amenity of the community. The major functions of the road reserve are described below:

- Provision of a carriageway for motor vehicles and bicycles
- Provision for pedestrian activity
- Provision of a corridor for vehicle access to private property
- Provision of a corridor for placement of basic physical infrastructure to meet the needs of the overall community (eg water, electricity, telecommunications, gas)
- Provision of space for landscape improvement and passive recreation for the enjoyment of the community.

Responsibilities

Ownership of the reservation for the vast majority of roads is vested in local general purpose councils. A council is obliged to manage this asset in the long term interests of the community it represents. While works within a local road reserve would generally require approval of council, State and Commonwealth law gives special recognition of the role of utility/service providers. Without providing a blanket exemption from other laws, relevant legislation specific to the utility/service providers, distinguishes these bodies from other parties interested in undertaking works within the road reserve. Relevant statutory provisions are referenced at **Attachment 1**. This recognition brings with it direct statutory responsibilities to these utility/service providers to efficiently supply fundamental services to the community, without adversely affecting other community assets.

Balancing Community Interests

Individual members of the community have a number of different “interests” in the activities occurring within public road reservations. For example, the same individual, be they a local resident, member of the workforce or visitor, would almost always be interested in having access to high quality and low cost water, energy and telecommunications services. These services rely, quite fundamentally, on access to the public road system for service connection and maintenance. At the same time, this individual would like the local road system to provide for safe motor vehicle and pedestrian passage. They are not pleased with the inconvenience of road openings, or the dangers of inadequately finished road restorations. Local ratepayers also have a concern that council rates be kept to reasonable levels and the cost of road maintenance is a major contributor to total council expenditure. This same individual may also place a high value on the visual appearance of the road reserve in the landscape. These different interests are illustrated in **Figure 1** overpage.

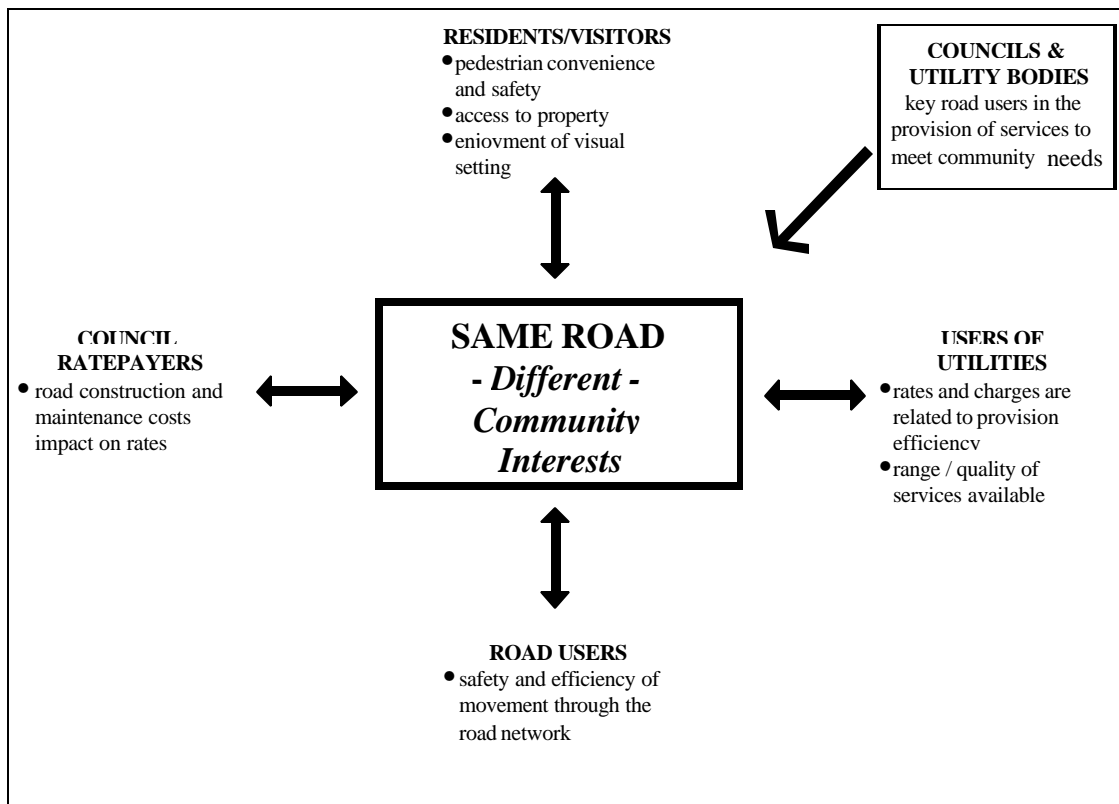


Figure 1. - Different Community Interests in the Road Reservation

This Agreement acknowledges that there can be differing points of view and priorities among these community interests. Views and priorities of individuals or groups may also vary at different points in time. For example, perspectives may change when connection or reconnection to utilities or services becomes an essential priority should such access be discontinued or unavailable for some reason.

In turn the Agreement recognises that there is a public benefit in councils and utility/service providers exercising their responsibilities in a cooperative and cohesive way, balancing any conflicting interests in a practical and judicious manner.

Structural Reform Programs and Utility/Service Providers

Recent legislative changes have resulted in the corporatisation of public utility/service providers and the introduction of competition. There are now requirements for competitive tendering and/or market testing for the works and services provided. Many of these changes have been introduced in accordance with the requirements of the National Competition Policy (NCP). The Structural Reform of Public Monopolies was defined as a central policy element of the NCP. A key aim is to encourage innovation and thus efficiency in the provision of such services to the ultimate benefit again to the wider community through lower costs and better services. Many councils are also moving into corporatisation models in organisational redesign, mindful again of NCP.

Towards the Community Interest

The forces of corporatisation and NCP do not of themselves necessarily promote cooperative work practices between councils and utility/service providers. However, such cooperation is clearly in the best interests of the community, remembering that the community is a key stakeholder in both utility/service providers and local councils. The signatories agree that the best outcome for these stakeholders can be obtained by building a relationship between councils and utility/service providers based on this Model Agreement.

2. Structure of the Model Agreement

The Model Agreement works at two levels.

Processes and Work Practices - (Attached as Schedule A)

This part of the Model Agreement defines processes and practices for individual works within the road reservation. It defines agreed provisions for:

- notification of works
- execution of works
- restoration of works
- relocation of assets required due to road works

Policy and Planning - (Attached as Schedule B)

This part of the Model Agreement acknowledges and defines the need for ongoing communication and cohesive planning between councils and utility/service providers. An arrangement is proposed which provides for regional and local communication lines, based on existing structures. Direct personal contact at appropriate levels of the organisations involved is necessary to achieve:

- mutual understanding of different perspectives and ongoing trust between the parties to the Agreement
- accountability for success in achieving the agreed outcomes
- flexibility in dealing with special circumstances
- appropriate refinement of elements of the Agreement
- agreement on tree planting and maintenance within road reservations
- agreement on other matters, where disagreement, uncertainty or opportunity may arise between councils and utility/service providers
- alternative dispute resolution processes.

3. Limitations to the Model Agreement

This Model Agreement is intended as a practical tool for councils and utility/service providers. It is focused on working arrangements for the provision, maintenance and relocation of infrastructure within road reservations, particularly where excavation within the road reserve is to occur. Other considerations are to be given to the broader environmental assessment requirements which may impact decisions on the location and nature of the works. The Model Agreement is concerned with decisions and actions after an environmental assessment has been undertaken and a decision to proceed with works has been made in principle.

It is emphasised that the Model Agreement may not meet the comprehensive needs of all councils and utility/service providers in this area. **It is anticipated that the Model Agreement will provide a platform for the review of existing agreements¹ and/or the establishment of new individual agreements between councils, or groups of councils, and utility/service providers.**

¹ See Selected Glossary at Attachment 1 for a definition of "agreement" for the purposes of this Model Agreement.

The Model Agreement does not take away from the statutory powers or duties of any parties. More so it is intended to facilitate practical working relations between councils and utility/service providers in the community interest.

Schedule A

Processes & Work Practices

- The path to an effective agreement is the setting of agreed standards of performance.
- The agreed standards of performance for processes and work practices are documented in the following pages as **Schedule A**.
- The performance standards at **Schedule A** can be subject to review and negotiation in accordance with the provisions of **Schedule B** to the agreement.

A1 - Notification

Central Objectives

- Provide for agreed notification of works to councils by utility/service providers, which:
 - ⇒ reflects the significance and potential environmental impacts of the works
 - ⇒ provides opportunity for the coordination of excavation works which may need to be undertaken by council and other utility/service bodies, where practical and relevant
 - ⇒ provides for exemptions for designated circumstances, including emergency situations.
- Provide for agreed notification of road works by councils to utility/service providers. Such notification to provide opportunity for the coordination of works by council and other utility/service bodies, where practical and relevant.
- Provide for councils to notify utility/service providers of major public events occurring in the road reservation which may be of relevance to such utility/service providers.

Context

- *At present there are different notification requirements for each utility/service provider under their respective legislation. It is necessary and appropriate to consider the purpose of notification (eg what happens during a 40 day or 10 day notification period). There is opportunity to rationalise and simplify the notification regime so that the time and resources of councils and utility/service providers are not wasted by the paperwork of unnecessary notification and/or unclear notification systems.*
- *There can be serious inconvenience or direct commercial implications for housing or business developments, associated with delays to utility/service provision due to notification periods. Regulatory customer service guarantees (eg 5 days to connect electricity) reflect the importance of speedy service provision to the community.*
- *At the same time there is a legitimate role for notification of utility/services works where there is a significant opportunity for value-adding as a consequence.*
- *Bi-directional notification between utility/service providers also provides an opportunity for the coordination of works and activities to maximise such coordination and gain the associated savings.*

Agreed Provisions

Three distinct categories of notification arrangements are proposed reflecting the type and circumstances of the subject works.

Category 1 - Notification Unnecessary

***P** Matters where there is minimal opportunity of adding value by notifying council, including the following:*

- routine maintenance and minor repair works
- direct customer connections except where carriageway crossings are required or openings of roads of collector² status or higher are required
- new subdivision works when undertaken in accordance with provisions of development consent and/or construction certificate under the Environmental Planning and Assessment Act
- pole replacement on low traffic volume roads, defined as having a status in the local road hierarchy which is of collector road status or lower
- direct roadway crossings by under-road boring
- emergency work
- other specified minor work and urgent work which may be negotiated with the council.

² See Selected Glossary at Attachment 1 for a definition of “collector road” for the purposes of the Model Agreement.

Category 2 - Potentially Significant Works: Notification Required³

P Intent that council would visit site or otherwise check background and provide advice back to the utility/service provider. Joint site visit where suggested by either party (eg history of problem, difficult site, etc). Good practice communication procedures to provide for a minimum 10 days to a maximum of 21 days notification period⁴. Dialogue and partnership approach between parties to promote continuing development of documented criteria which would further reduce wasteful notification. Works in this category to include:

- laying of street reticulation lines and pits
- underground road crossings (either open or tunnel)
- pole replacement works on roads higher than “collector road” status in the road hierarchy
- pole construction works, excluding house service connections
- appropriate shorter term road works and street beautification works undertaken by council
- other specified works to be negotiated with local councils.

Constructing utility/service provider also to notify other utility/service providers where shared trenching, or evidence of other utilities/services in direct vicinity.

Judgment to be exercised on the appropriateness of prenotification to neighbours where works have minimal potential impact.

Category 3 - Major Programmed Works - Advanced Notification Required

P Significant potential implications for councils and/or utility/service providers. Aim is to provide effective opportunity for local coordination of works to reduce costs and inconvenience. Works in this category to include:

- all programmed major works, eg. trunk lines, sub-transmission works
- programmed major road and drainage works by council.

Utility/service provider to also advise other utility/service providers, except where commercial in confidence.

Where relevant, utility/service providers to be advised of council approval of major development applications in the local government area.

The Category 3 notification program is also relevant to **Item B1 - Coordination of Works in Schedule B** of the agreement.

Other Matters

Mechanisms for Notification

Some councils and utility/service providers formally exchange annual programs already. Detailed arrangements for the mechanisms for notification in accordance with the agreement should be determined by the individual parties. Some authorities have introduced electronic mail access to individual officers. In other instances phone, fax and/or mail notification will be necessary. Standards for the mechanisms for notification are discussed further at **Item B1 - Coordination of Works in Schedule B**.

³ Relevant contact names for local council and all utility/service providers, and/or their authorised agents, to be exchanged and kept up to date in accordance with Item B1 of Schedule B.

⁴ It is not an intent of the Model Agreement to extend notification periods which may be operating at present unless it can be demonstrated that the periods are clearly inappropriate.

Location of Existing Underground Assets

Prior to the commencement of works by any party, those parties are required to contact the Dial-Before-You-Dig Service to enable them to be fully informed of the location of existing services.

A2 - Execution of Works

Central Objectives

- Facilitate safe and convenient movement of pedestrian and vehicle traffic around the site during the execution of works.
- Ensure the backfilling and compaction of excavation works:
 - ⇒ restores the subgrade to a standard which protects the integrity of the site from future failure as a consequence of the excavation
 - ⇒ is undertaken in an expeditious manner in the interests of the safety and convenience of all road users.

Context

Traffic

- *Standards and processes for Traffic Management Plans are clear but there can be problems with implementation, especially where contractors or subcontractors are unaware of, or unwilling to comply with, the requirements.*

Backfilling and Compaction

- *Councils have serious concerns about hidden problems which may cause long term financial disadvantage to the local community.*
- *Defined standards for backfilling and compaction are in place in AUS-SPEC #2, Specification 306⁵. Members of the Streets Opening Conference have acknowledged these standards.*

Liability and Temporary Sealing

- *Current arrangements for temporary sealing of road and footpath openings introduce questions of liability for any injury during this period. There is a need to ensure temporary works do not cause injury or inconvenience. At the same time there is a need for utility/service providers and councils to work towards clarifying and coming to agreement on the policy and procedures for handling liability.*

Accreditation Systems for Road Restoration Contractors

- *An appropriate accreditation system is necessary to assist in addressing the QA concerns raised above. Both IMEA and Sydney Water are working with the Civil Contractors' Federation on Quality Assurance models. These and/or other systems may be agreed to as appropriate between the parties involved. It is important that any new QA system be meaningful, practical and effective, and that it incorporate a minimum of wasteful red tape.*

Agreed Provisions

Traffic Management

- Where works require control of traffic, appropriate traffic control devices to be put in place in accordance with AS 1742.3.
- Where planned works are proposed on roads of “collector road” status or higher, and obstruction of traffic is unavoidable, a traffic management plan is required. This plan is to be prepared in accordance with AS 1742.3 and submitted for approval by the relevant road authority (RTA or council) and the Police Service, with reasonable notice (and a minimum of 10 days) prior to the intended commencement of works.
- Utility/service providers to ensure quality assurance and commitment of works staff to the approved traffic management plan, and that a copy of the plan is available on site throughout the course of works.
- At the completion of the works subject to an approved traffic control plan, a brief compliance report will be prepared by a responsible person, certifying that the works were undertaken in accordance with the plan, and noting any comments to assist in future refinement of traffic control plans.
- These provisions will be a matter subject to audit and review in accordance with **Item B2 - Performance Standards** in **Schedule B** of the agreement.

⁵ AUS-SPEC #2, Specification 306 is currently being reviewed in the light of certain technical and procedural issues raised by utility/service providers. It is acknowledged by all parties that AUS-SPEC Specification 306 will be reviewed from time to time and will require concurrence from the parties concerned.

Backfilling and Compaction

- Backfilling and compaction will provide a restoration outcome as close as practicable to the pre-existing subgrade, and will be undertaken in accordance with the provisions of AUS-SPEC #2, Specification 306.
- Records should be kept of the materials used for backfilling. Where material is imported this record should be based on supplier certification on the grading and performance with respect to given specifications.
- Where appropriate (eg excavation along longitudinal sections of sealed surfaces) compaction tests will be undertaken in accordance with AUS-SPEC #2, Specification 306 and records kept.
- Where the project provides for permanent restoration works to be undertaken by the utility/service provider, then, where requested, councils will be given 24 hours notice of compaction tests to allow discretion for council officers to be a party to the tests (see **Item A3 - Restoration** for further details on permanent restoration works).
- Any defects will be subject to a “corrective action request” and rectified at no cost to the council.
- These provisions will be a matter subject to audit and review in accordance with **Item B2 - Performance Standards and Review Provisions at Schedule B** of the agreement.

Quality Assurance

- Utility/service providers are to ensure that contractors complete a quality assurance checklist for the execution of all works with the potential to affect the public road repair and maintenance. A pilot quality checklist is provided at **Attachment 2**.
- Copies of the QA checklists are to be made available to the relevant council within 7 days of completion for all Category 2 and Category 3 works (as identified at **Item A1 - Notification**) and the following works where notification is agreed as unnecessary at **Item A1**: new subdivision works, agreed urgent works and emergency works.
- The QA checklist may be modified in accordance with local agreements between councils and utility/service providers, and/or any future Quality Assurance models which are developed (eg the IMEA and Sydney Water systems under development with the Civil Contractor’s Federation). The refinement of QA checklists is to be mindful of the need for QA systems to be meaningful, practical and effective, while avoiding wasteful red tape.

A3 - Restoration

Central Objectives

- To ensure that the final restoration of excavation works and reinstatement of vehicle carriageway and pathway surfaces “makes good” these assets, with no short or long term disbenefits to the council ratepayers, and without unreasonable cost implications for the utility/service provider.
- To provide for final restoration works within as short a time period as is practicable with a view to limiting: public inconvenience, risk to public safety and accompanying liability for council ratepayers and utility/service providers.

Context

Utility/service providers are concerned about:

- *pricing for the final restoration works where such pricing is undertaken by council and not subject to market testing*
- *long periods elapsing between temporary and permanent reinstatement, and concomitant liability implications*
- *occasions where unfair restoration costs may be sought in instances where works are required on footways that are unsound because of actions of other parties. There is a concern to ensure that fair and reasonable restoration obligations, only, be born by the utility/service provider undertaking works which may have no fault for these pre-existing circumstances.*

Councils are concerned about:

- *the risk of excavation works being improperly reinstated and the potential need for replacement work, at high cost liability to ratepayers, should failure occur after the utility/service provider has left the site*
- *injury to road users and liability for damages to ratepayers should improper reinstatement occur, resulting in an irregular, and potentially dangerous finished surface*
- *practical and effective means of being assured that settlement of backfilled and compacted works is complete within a short time frame*
- *long term effects on the road pavement of poorly excavated and restored openings, eg damage to subsoil drains, stormwater pipes, road and footpath surfaces.*

Agreed Provisions

Extent and Standards of Works

- The extent of works shall be in accordance with the provisions of: NSW Streets Opening Conference, *Information Bulletin on Codes and Practices*, Section 5.5.
- Standards for works shall be in accordance with *AUS-SPEC #2, Specification 306*.

Undertaking Works - Contracting and Costing

Parties to the Model Agreement will come to arrangements on the final works mindful of the following principles:

Principle of Agreement	Recommended Initiatives for Discussion
1. Appropriateness of works being market tested, mindful of the community’s interest in achieving cost efficient utility/service provision	⇒ Selective competitive tendering of works, but with provision for: an audit and/or inspection role, and recovery of audit/inspection costs.
2. Importance of high quality of finished works, recognising difficulties in ensuring quality standards for hidden areas, and costs and inconvenience if failure occurs	⇒ Tendering contractors must be QA accredited under an agreed scheme or by local agreement. ⇒ QA checklists to be completed by utility/service officer and contractor and, if required, copies to be forwarded to council within 7 days of completion of works. ⇒ See Item A2 for details on those works where QA checklists are to be forwarded to councils- See Attachment 2 for a pilot checklist.
3. Recognition of ongoing risk of future failure of road restoration. Council ratepayers have obligation to fund future reinstatement of road carriageway, and/or	⇒ In instances where utility/service providers wish to have their agents undertake final road restoration works, instead of council, a provision for a “without prejudice” contribution to a sinking fund

associated works, whether or not the works were undertaken under council supervision, should failure occur in the medium to longer term.	account held by a council to assist meet this risk of failure. ⇒ The contribution amount to be set at 5% of the cost of the final restoration works for the motor vehicle carriageway.
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Timing of Works

The timing of works from completion of backfilling and compaction to the final restoration shall be agreed between council and the utility/service provider on a site by site basis.

- Where agreed as appropriate, it will be based on documented recommendations of a suitably qualified geotechnical engineer, or other agreed specialist, after undertaking inspection of backfilled and compacted works and review of compaction test reports.
- The intent is that the permanent and final restoration will be completed as soon as is practically possible. A time frame of not more than 3 months is envisaged.
- Final restoration should not be delayed to provide for natural compaction. Standard of work employed should ensure satisfactory compaction can be achieved without delaying final restoration.

A4 - Asset Relocation

Central Objectives

- Provide for a cohesive and coordinated approach to the relocation of the in-situ infrastructure assets of utility/service providers, when required due to road or other works planned by the council.
- Provide for a balanced approach to compensation for the relocation of the in-situ infrastructure assets of utility/service providers resultant from road redesign by councils.

Context

Managing the process

Utility/service providers need to have advance notice on proposed road works, or major new paving works, including decorative paving, planned by councils. Early notice can help lessen the environmental impact and inconvenience to the local community by facilitating more coordinated works. Coordinated decision making may result in changes to the proposed works to suit both utility/service providers and councils, with net savings to the community.

Fair Compensation

Where utility/services infrastructure is required to be relocated at no fault of the utility/service providers, the question of appropriate compensation is raised.

This agreement has as its basis the fairest outcome in the community interest, without fear of or favour to the particular commercial interests of individual council or utility/service providers. The agreement also recognises that decisions on road works are a legitimate public interest exercise, but fair compensation for the value of works required to be relocated or replaced should be paid.

Agreed Provisions

Managing the process

Road works, or major new paving works, including decorative paving, planned by councils will be notified to utility/service providers as soon as is practicable to facilitate:

- appropriate planning and coordination of the works
- savings to the community due to the sharing of costs
- minimisation of disturbance to the local area.

Notification by council to relevant utility/service providers in accordance with the following principles:

1. Before Construction Commences

⇒ *Works that will have a minor impact on the utility/service provider with no predesign or potentially significant impact on the utility/service provider's work program.*

2. During Design Phase

⇒ *Works requiring investigation by the utility/service provider and likely to have potentially significant impact on the utility/service provider's work program.*

⇒ *Works that allow opportunity for value adding.*

3. During Planning Phase

⇒ *Works likely to have significant potential impacts for utility/service providers.*

⇒ *Works that allow opportunity for value adding.*

⇒ *Aim is to provide for effective opportunities for local coordination of works to reduce cost and inconvenience.*

Fair Compensation and Betterment

It is agreed that the following principles provide the foundation for individual negotiations on just compensation for relocation of assets:

- the body which creates the need for the infrastructure assets of another party to be relocated or otherwise disturbed should bear the full cost of the agreed scope of works, *less* the discount for any mutually agreed betterment, the cost of which shall be met by the benefiting party
- betterment includes works which increase the practical working life of the asset when it is replaced or when useable increased capacity for the asset is achieved
- where works result in an increase in the standards, the apportionment of betterment should be calculated to reflect the cost of upgrading to the new standard from the previous standard. This applies where a strategic decision is taken by either party to enhance aesthetics, safety, capacity, life and/or reliability, but the decision is not directly attributable to a particular project.
- Betterment does not apply where utility/services infrastructure is interfered with in a way which restricts maintenance/operation/function and which requires it to be adjusted to meet the standards of the utility/service providers. Such adjustments should take place at no cost to the utility/service provider (for example changes in road levels). This provision does not override the principles outlined in the above two bullet points which recognise the betterment which can associate with life enhancement or increase in the standards of infrastructure.

Dispute Resolution

Arrangements for voluntary dispute resolution on this and other matters are discussed at **Item B4 - Dispute Resolution** at **Schedule B** of the agreement.

Schedule B

Policy & Planning

- **Schedule B** to the Model Agreement recognises the potential benefits of ongoing personal contact and interaction among relevant key staff of each of the parties. The agreement's capacity to reach its potential will be facilitated through provision of opportunity for key people to exchange information, and perceptions, and negotiate in good faith.
- The intent is to follow on from the example provided by the NSW Streets Opening Conference itself, and other similar groups, which bring an opportunity for creative collaboration among stakeholders with different core interests. Personal interaction at more localised forums can provide for regular communication on opportunities for practical, local cooperation and problem solving.
- Regional groups combining all interested utility/service providers and councils, and based on Regional Organisation of Council boundaries, local IMEA groups or other suitable boundaries designed to suit most efficient interaction, are to be encouraged, and six-monthly meetings held on a rotating basis. The NSW Streets Opening Conference will facilitate the initial formation meeting. The groups could be called Regional Streets Opening Groups (RSOG).
- It is important that the parties involved in such forums bring the appropriate accountability to negotiate in good faith and deliver outcomes on behalf of their organisation.
- The Agenda for the forums will be based on the items nominated at **Schedule B**, as follows.

B1 - Coordination of Works

Central Objectives

Provide opportunity for a planned and coordinated approach to works within the road reservation in the interests of the community.

Context

- *All parties want to eliminate avoidable waste and lost opportunity costs, when one party opens a road without advising others who may have had a need to do so as well.*
- *The challenge is to have a practical means of advising the numerous parties who may have an interest.*
- *There is also a concern that advising others may result in delays to the initiating party.*
- *The previous SOC system of exchanging large volumes of papers outlining works programs was not successful - "drowning in paper..."*

Agreed Provisions

- Regional Streets Opening Groups (RSOGs) will provide opportunity for more localised exchange on programs. Six monthly meetings provide the opportunity for exchange of information on major works. However if changes to major works programs occur, of relevance to any other parties, immediate notification to the parties should occur with follow-up at programmed six monthly meetings
- Up to date lists of key contacts are to be maintained with each party agreeing to notify others within 7 days of a change of contact point. Wherever possible face-to-face meetings between new staff and other key parties to the agreement will be held at an early date.
- RSOGs are to consider regional protocols for notification mechanisms, promoting the use of personalised electronic mail where practicable.
- See **Schedule A - Item A1** and **Item A4** for other details on notification.

B2 - Performance Standards & Review Provisions

Central Objectives

Provide opportunity for a structured review and verification regime for process and work practice elements of the agreement, as outlined in **Schedule A**, to facilitate “fact based” interaction and decisions on refinement of work practices.

Context

- *The need to ensure that works are undertaken in accordance with agreed standards is a key concern with competitive tendering of works.*
- *It is reasonable that any freeing up of direct council control of road reservation works needs to be coupled with more rigorous quality assurance programs, which is effective and value-adding for all stakeholders.*
- *With a mind to the community interest, an effective and proven quality assurance regime provides a path to ongoing flexibility and competition between parties interested in undertaking the works, while minimising the risk to the community (ratepayers) of hidden inadequacy of works.*

Agreed Provisions

There will be a partnership approach to quality systems for works by utility/service providers within the council road reservation, which will comprise:

- Use of contractors accredited under an agreed QA scheme for road excavation, backfilling and restoration works as agreed. For other minor works councils to be advised of selected contractors.
- Commitment to transparent processes and agreed technical standards for works which have the potential to significantly affect the integrity of the road asset. This commitment will be demonstrated by completion of quality assurance checklists by utility/service providers and contractors (see pilot checklist at **Attachment 2**). Where required, copies of QA checklists and relevant contact points to be provided to councils at the completion of temporary and permanent road or pedestrian pavement restoration works. For other minor works, QA checklists to be maintained by utility/service provider for audit purposes.
- A regime of random audits of works will be undertaken as a component of the agreed QA scheme, and liability will accrue for any correction works within an agreed period (suggested as 1 year from completion).
- Without prejudice sinking fund provisions to cover risk of hidden inadequacies (recommended as 5% of the cost of vehicular carriageway final restoration works) in accordance with **Item A3 - Restoration** in **Schedule A** of the agreement.

B3 - Utilities/Services, Tree Planting and Landscape Setting

Central Objectives

Acknowledge the legitimate place for both utility/services infrastructure and trees in the road reserve. Acknowledge that Councils and utility/service providers have responsibilities for the maintenance of safety clearances between trees and overhead lines. Ensure that councils and utility/service providers acknowledge the need for decisions to be based on the principles of *compatibility* in relevant planning, education and maintenance programs.

Context

- *Trees which have grown too close to overhead power lines are the major cause of power outage. This and other consequences can cause serious safety concerns, inconvenience and indirect costs to the community. Liability concerns of government and utility/service bodies are also noteworthy here.*
- *Similarly the root systems of plants can cause serious damage to underground infrastructure and/or impede access points for important works.*
- *Maintenance programs aimed at ensuring safe clearances between trees and utility/services infrastructure are significant cost items to utility/service providers and councils/landowners. Councils have a responsibility for the maintenance of trees planted under power lines (see section 48 of the Electricity Supply Act, 1995).*
- *At the same time there is a need for due recognition to the legitimate role of landscaping in improving the visual interest and appeal of the street in the community interest.*
- *A key issue is the selection of appropriate trees in any planting programs, mindful of any pre-existing overhead or underground infrastructure which may be in place.*
- *In greenfield sites there is a need, as well, for the planning of utility/services infrastructure locations to be undertaken in collaboration with the landscape strategy for an area.*

Agreed Provisions

Street Tree Planting

- Councils and utility/service providers recognise that it is in the community's interest to work in partnership to fulfil each party's responsibilities for tree management, and that the most appropriate way to achieve this is by the development of Tree Management Agreements. Agreements should cover all aspects of tree management in a holistic sense, eg. tree planting policies and appropriate species, community consultation and education, use of new technology such as Aerial Bundled Cable, removal and replacement programs, maintenance of safety clearances, etc. The NSW Streets Opening Conference and LGSA will circulate further information on this matter.
- For greenfield development, utility/service providers and councils are in agreement that discussions should occur at the early stages of planning aimed at preventing damage to infrastructure and avoiding removal of mature landscaping, while recognising the importance of landscaping to the streetscape.

Maintenance

- Maintenance of trees clear of utility/services infrastructure within the road reservation shall be undertaken in line with legal powers and duties or as agreed in Tree Management Agreements. Council and utility/service providers should operate within generally accepted occupational health and safety practices.
- Tree removal or substitution programs are to be embraced by councils and utility/service providers in situations where ongoing disfiguring trimming is necessary to maintain safety clearances.

B4 - Dispute Resolution

Central Objectives

Provide a voluntary protocol and forum for the handling of disputes which may arise between the parties on matters relevant to the Model Agreement.

Context

- *In accordance with the central principles of the Model Agreement it is in the interests of all parties to look for practical and equitable solutions to problems and disputes that arise. Mindful of the wider community interest, recourse to the courts is seen as a last resort in these matters.*

Agreed Provisions

- It is agreed that alternative dispute resolution methodologies will be pursued by the parties to any disputes, mindful of the principles of open communication and fair negotiation, with the intent of:
 - ⇒ working with a positive and constructive, rather than adversarial approach
 - ⇒ clarifying the issues involved
 - ⇒ establishing the facts relating to the issues
 - ⇒ confining the dispute and moving to a resolution.
- In general the approach to dispute handling will be as follows:
 1. Preference for direct "on the ground" resolution of the dispute between the parties
 2. Where appropriate, use of the NSW Streets Opening Conference forum to allow senior representatives to be involved in coming to a resolution of the dispute through constructive dialogue in accordance with the principles of the Model Agreement.
- The use of qualified neutral mediators, or other alternative dispute resolution resources and processes is also open to the parties as a means of coming to a satisfactory resolution of disputes.

B5 - Other Strategic Factors

Central Objectives

Provide opportunity for: dialogue, improved understanding of different perceptions and action on other matters of mutual interest to councils and utility/service providers, in the overall interests of the community.

Context

This item provides the vehicle for ongoing discussion and collaboration on any new or developing points of joint interest among councils and utility/service providers. It is hoped that matters for discussion will evolve over time as the forum for personal contact is improved. Some potential examples are provided below.

Environmental Planning & Assessment Act, 1979 Implications

- *Opportunity for review of the need for those utility/services works with minor environmental effects to require consent under the EPA Act. Local councils may be interested in defining such work as “exempt” or “complying” development under the categorisation regime of the EPA Act. The object would be to reduce waste for councils and utility/service providers associated with an inappropriate and unnecessary consent process for low impact activities.*
- *Opportunity for DAs and Construction Certificate Applications to be required to take account of the location of utility/services infrastructure within the road reservation when designing accessway. Telstra, in particular, have raised concern about the problems with driveways damaging pits. Some councils may be willing to place a notice and tick box on the DA form, requiring applicants to take account of this potentially costly problem for themselves and/or Telstra, if due care is not taken at the early stages of design.*
- *Opportunity for councils to assist in avoiding damage to utility/service infrastructure through the DA, Construction Certificate and Road Opening Permit processes.*

Limits to Liability for Works

A matter for resolution relates to ongoing liability and potential limits to liability for works within the road reservation.

Failure Risks and Sinking Fund Provisions

Item A3 of the Model Agreement refers to a series of “Recommended Initiatives for Discussion” including provision for “without prejudice” contributions to a sinking fund to assist in meeting the future failure risks.

Information Technology

The opportunities for further use of advanced information technology relating to the location of infrastructure are seen as a significant opportunity. Exchange of GIS information is seen as a progressive move which warrants further exploration.

Agreed Provisions

- Agenda items will be taken up with regional groups and individual councils at the RSOG.

Attachment One

Relevant legislation

Relevant legislation relating to the individual roles and responsibilities of road authorities and utility/service providers includes:

- NSW Local Government Act, 1993
- NSW Environmental Planning and Assessment Act, 1979
- NSW Roads Act, 1993
- NSW Electricity Supply Act, 1995
- NSW Energy Services Corporatisation Act, 1995
- NSW Gas Supply Act, 1996
- NSW Pipelines Act, 1967
- NSW Water Supply Authorities Act, 1987
- NSW Water Board (Corporatisation) Act, 1994
- Commonwealth Environment Protection (Impact of Proposals) Act, 1974
- Commonwealth Telecommunications Act, 1997
- Commonwealth Telecommunications (Low Impact Facilities) Determination, 1997
- Commonwealth Telecommunications Code of Practice, 1997.

State and Commonwealth legislation relevant to public health and safety may also apply to planning and works undertaken by councils and utility/service providers.

Selected Glossary

In the interests of consistent interpretation of the provisions of the Model Agreement the following glossary of selected terms is provided:

Term	Meaning
Agreement	A formal arrangement between local government, or an individual Council, and a utility/service provider which may take the form of an agreement, deed, contract or memorandum of understanding, etc.
Asset Relocation	This is the title of Item A4 of the Model Agreement. It is intended to refer to circumstances where the assets of utility/service providers need to be relocated due to roadworks planned by the council.
Collector Roads	Collector roads are higher order roads in the local road hierarchy. These roads collect traffic from lower order roads such as loop roads and culs-de sac. Collector roads then provide access to higher traffic volume sub-arterial and arterial roads. Many councils have mapping bases which identify collector roads in their local government area.
Execution of Works	This is the title of Item A2 in the Model Agreement. It is intended to refer to all works up to, but not including, the final restoration works. It includes planning for traffic safety, excavation, backfilling and compaction, and temporary sealing.
Restoration	This is the title of Item A3 of the Model Agreement. It is intended to refer to the final restoration and reinstatement works following any excavation.

Attachment Two

QUALITY ASSURANCE CERTIFICATION

Example Only

The Quality Checklist provided below is for discussion purposes only. The intent is that there be QA reporting arrangements for whole or part of individual projects in accordance with the principles of the Model Agreement. The checklist provided below is intended as a guide to the type of content a QA reporting arrangement may include.

Utility/Services Works within Road Reservation

Quality Assurance Report **Example**

Project Title:	
Location:	
DA and/or Construction Certificate No. (if applicable):	
Drawing References:	
Utility/Service Authority Project Manager:	Name: Company Name: Address: Phone: work - Fax: a/h -
Contractor Project Manager:	Name: Address: Phone: work - Fax: a/h -

I certify that the design and construction of the subject works is in accordance with:

- current standards of good industry practice
- all relevant conditions imposed by the council
- relevant industry standards as nominated below:

Utility/Service Project Manager:	Contractor Project Manager
Signed	Signed
Date:	Date:

Quality assurance aspects of the notification and works stages of the project are certified in the following pages, as relevant to the project circumstances.

Item A1/1 - Notification Example

		Check Completed By <i>(initials)</i> ¹	Date	Not Applicable
Category 1 Works - Notification Unnecessary		_____	___/___/___	<input type="checkbox"/>
<ul style="list-style-type: none"> • routine maintenance and minor repair works <input type="checkbox"/> • other specified minor work and urgent work negotiated with local council <input type="checkbox"/> • direct subscriber connections - no carriageway crossing required, no opening of collector road or higher required <input type="checkbox"/> • new subdivision works when undertaken in accordance with provisions of development consent and/or construction certificate under Environmental Planning and Assessment Act <input type="checkbox"/> • emergency work. <input type="checkbox"/> 				
Category 2 - Potentially Significant Works (10-21 Days notification)				
Authority Notified: _____ Date Notified: _____ (Name person and relevant council and/or other utility/service bodies)		_____	___/___/___	<input type="checkbox"/>
Comments Received: yes / no		_____	___/___/___	<input type="checkbox"/>
Proposed Actions, if any, or Comment in Reply: (Provide as attachment if space insufficient)		_____	___/___/___	<input type="checkbox"/>
Date of Commencement of Works		_____	___/___/___	<input type="checkbox"/>

Note 1: Personnel initialising the checksheets must be approved under the project quality plan. It is the responsibility of the project managers to ensure authorised personnel only sign off on each checksheet.

Utility/Service Project Manager:	Contractor Project Manager
Signed _____	Signed _____
Date: _____	Date: _____

Item A1/2 - Notification Example

		Check Completed By (initials)	Date	Not Applicable
Category 3 - Major Programmed Works (advanced notification required)				
Authority Notified: _____ Date Notified: ____/____/____ <small>(Name person and relevant council and/or other utility/service bodies)</small>		_____	____/____/____ -	<input type="checkbox"/>
Comments Received: yes / no		_____	____/____/____ -	<input type="checkbox"/>
Notes on Notification Process and Comments <small>(Provide as attachment if space insufficient. Please include references where further information on detailed notification processes and references to comments and responses can be reviewed).</small>		_____	____/____/____ -	<input type="checkbox"/>
Date of Commencement of Works		_____	____/____/____ -	<input type="checkbox"/>

Utility/Service Project Manager: Signed _____ <div style="text-align: right;">Date: _____</div>	Contractor Project Manager Signed _____ <div style="text-align: right;">Date: _____</div>
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Item A2/1 - Execution of Works

Traffic Management

Example

	Check Completed By (initials)	Date	Not Applicable
<u>Works on Higher Traffic Volume Roads</u> <ul style="list-style-type: none"> Works are proposed on roads classified as of “collector road” status or higher, and obstruction of traffic will occur. Traffic management plan submitted for approval by the relevant road authority (RTA or council) and the Police Service, 10-21 days prior to the intended commencement of works. 	_____	___/___/___ -	<input type="checkbox"/>
<ul style="list-style-type: none"> Date traffic plan submitted: 	_____	___/___/___ -	
<ul style="list-style-type: none"> Date traffic plan agreed: 	_____	___/___/___ -	
<ul style="list-style-type: none"> Any Comments: 	_____	___/___/___ -	
<ul style="list-style-type: none"> Agreed Traffic Management Plan on site throughout the course of works 	_____	___/___/___ -	
<ul style="list-style-type: none"> Agreed Traffic Management Plan implemented throughout the course of works 	_____	___/___/___ -	
<ul style="list-style-type: none"> Comments on any Incidents, or Departures from the Agreed Traffic Management Plan 			
<u>Works on Minor Roads only</u> <ul style="list-style-type: none"> Traffic, control devices in place in accordance with AS 1742.3 	_____	___/___/___ -	<input type="checkbox"/>
<u>Comments on any Incidents</u>	_____	___/___/___ -	

Utility/Service Project Manager: Signed	Contractor Project Manager Signed
Date:	Date:

Item A2/2 - Execution of Works

Backfilling and Compaction

Example

	Check Completed By (initials)	Date	Not Applicable
<u>Works, Inspections, Materials Certification</u>			
<ul style="list-style-type: none"> Backfilling and Compaction undertaken to the following standards: 	_____	____/____/____ -	<input type="checkbox"/>
<ul style="list-style-type: none"> Any requirement for Council notification of stages of works to facilitate inspections satisfied 	_____	____/____/____ -	<input type="checkbox"/>
<ul style="list-style-type: none"> Supplier certification of materials used for backfilling available 	_____	____/____/____ -	<input type="checkbox"/>
<u>Compaction Tests and Corrective Actions</u>			
<ul style="list-style-type: none"> Compaction tests undertaken at the following stages of construction. 	_____	____/____/____ -	<input type="checkbox"/>
<ul style="list-style-type: none"> Copies of the reports on all tests available to council 	_____	____/____/____ -	
<ul style="list-style-type: none"> Comments on Any Defects and Corrective Actions 	_____	____/____/____ -	<input type="checkbox"/>

Utility/Service Project Manager:	Contractor Project Manager
Signed	Signed
Date:	Date:

Item A3 - Restoration Example

	Check Completed By <i>(initials)</i>	Date	Not Applicable
<p><u>Extent of Works</u></p> <ul style="list-style-type: none"> In accordance with the provision of the NSW Streets Opening Conference Information Bulletin 	_____	____/____/____ -	<input type="checkbox"/>
<ul style="list-style-type: none"> In accordance with mutually agreed variation. Summary details, or references to specific agreements provided below, or attached: 	_____	____/____/____ -	<input type="checkbox"/>
<p><u>Standards of Works</u></p> <ul style="list-style-type: none"> In accordance with the provision of AUS-SPEC #2, Specification 306. 	_____	____/____/____ -	<input type="checkbox"/>
<ul style="list-style-type: none"> Mutually agreed variations to the provision of AUS-SPEC #2, Specification 306. Summary details, or references to specific agreements provided below, or attached: 	_____	____/____/____ -	<input type="checkbox"/>
<ul style="list-style-type: none"> Any requirement for Council notification of stages of works to facilitate inspections satisfied. List requirements below or attach. 	_____	____/____/____ -	<input type="checkbox"/>

Utility/Service Project Manager:	Contractor Project Manager
Signed	Signed
Date:	Date: