

Private Assets in Road Reserves – Council Policy No. 116

1. POLICY PURPOSE

Council is responsible for the provision and maintenance of local roads infrastructure.

All roads have a defined road reserve which is owned or managed via Council and the legislative framework for such is established under the Local Government Act 1989 and the *Road Management Act 2004*. Such legislation provides a rigorous framework designed to protect the purpose of the road and the road user.

It is acknowledged that the use of the road must be considered alongside other factors such as economic benefit and social need, which may require the installation of “non-road infrastructure” in the form of privately owned assets. Notwithstanding this, this Policy intends to provide a framework to enable such needs to be balanced with the protection of the primary purpose of the road.

Some statutory service providers have rights and obligations outlined in various Acts to install infrastructure in road reserves without permission of the road authority. Private individuals do not have this right.

This policy deals only with assets installed or modified after the date of adoption of this policy, within a road reserve. This policy does not cover or deal with assets that are installed or maintained by a statutory service provider, or assets installed within a road reserve within a township such as, but not limited to, driveways or stormwater pipes that are installed under Council’s works within a road reserve permit process or pipelines in rural areas less than 60 meters in length and under 150 millimetres in diameter.

2. DEFINITIONS

Asset – a physical component of a facility which has value, enables services to be provided and has an economic life of greater than twelve months.

Asset Owner – for the purposes of this Policy the asset owner should be read as “Council” as per the *Road Management Act 2004*.

Exceptional circumstances – the existence of a physical obstacle (buildings, natural structures including waterways, rock formations, culturally sensitive land, land with significant native vegetation) that prevents access and an alternative route is not available; or where all reasonable attempts have been unsuccessful in obtaining the necessary consent of a non-beneficiary landowner, and a reasonable alternate route within private land is not available. The determination of exceptional circumstance will be at the sole discretion of the Director Infrastructure Services. This assessment is required to be balanced with the requirement of Council to protect the road reserve as outlined in s.4d of the *Road Management Act 2004*.

Non-road infrastructure – means infrastructure in, on, under or over a road which is not road infrastructure. This includes such infrastructure such as water and sewerage pipes, cables, electricity poles, mail boxes, roadside furniture etc.

Responsible road authority – means the road authority which has operational functions as determined in accordance with s.37 of the *Road Management Act 2004*. For the purposes of this policy the responsible road authority is Council.

Road infrastructure – means the infrastructure which forms part of a roadway, pathway or shoulder, including –

- a) structures forming part of the roadway, pathway or shoulder;
- b) materials from which a roadway, pathway or shoulder is made;

Road reserves – means all of the area of land that is within the boundaries of a road.

Section 173 Agreement – is a legal contract allowed under s.121 of the *Road Management Act 2004* and s.173 of the *Planning and Environment Act 1987* that outlines rights and obligations and is attached to title of private land.

Statutory service providers – authorities empowered under an Act with providing utility services such as power, gas, water and telecommunication infrastructure.

User Pays Principle – when users pay the full costs of the goods or services they consume. It is premised on a principle that those who do not use a service should not be obligated to pay for it. Such a principle is most effective when the beneficiary aligns exactly with the user.

Works within A Road Reserve permit – evidences the final approvals for work that, once received, allows works within the road reserve to commence.

3. POLICY

Council is responsible for the provision and maintenance of local roads infrastructure.

Under section 34 of the *Road Management Act 2004* a responsible road authority is compelled to manage the use of roads having regard to the principle that the primary purpose of a road is to be used by members of the public and that other uses are to be managed in a manner which minimises any adverse effect on the safe and efficient operation of the road. It further requires the authority to coordinate the installation of infrastructure on roads and the conduct of other works in such a way as to minimise, as far as is reasonably practicable, adverse impacts on the provision of utility services.

Infrastructure within road reserves includes, but is not limited to, the road itself (including formation and sub grade), pavement, seal, shoulders, guideposts, table drains or side cuts, culverts and regulatory or discretionary road signage installed by the road authority.

Maintenance obligations are imposed on all owners of infrastructure in a road reserve through the *Road Management Act 2004* and other Acts which include such things as inspection requirements, documentation, processes for undertaking works and safety regulations. The vast majority of owners of infrastructure within road reserves are statutory service providers. Such bodies have a legislative framework within which they operate and access to appropriate levels of insurance coverage should legal proceedings be undertaken against them.

3.1 Legal Framework

A Section 173 Agreement will be required to be entered into with the beneficiary landowner prior to approval of works in road reserves. The provision of assets is usually for the benefit of the current owner of the land and it is appropriate that obligations should be transferred with the land to ensure integrity of the management framework.

Requirements of a Section 173 Agreement

- Inspection requirement: For assets installed within road reserves, inspections will be required upon completion of the works.
- Maintenance requirements: includes the execution of all works of any description which are required to keep the road or infrastructure in the state of utility determined in accordance with the *Road Management Act 2004* or any other Act deemed applicable.
- Public liability insurance of \$10,000,000 (or such increased amount as may be periodically advising in writing by Council) to be held and kept current.

3.2 Design Considerations

Council will require any assets within road reserves to be installed fence to fence, by the shortest possible route or running perpendicular across roads. Required technical specifications regarding design, annual maintenance, depth, materials and location requirements will be outlined to the applicant by Council's Director Infrastructure Services.

Assets will be required to be installed underground where possible.

Sharing of Council's existing or future infrastructure which compromises its intended purpose (such as culverts) will not be allowed.

Applications to install assets running longitudinally within road reserves will only be approved in exceptional circumstances. Should such a circumstance exist, and an application is received to install a privately owned asset longitudinally in a road reserve, permission would only be granted after the acceptance of the following conditions, including but not limited to:

The availability of the corridor within the road reserve between the road reserve fence line and the commencement of Council's road drainage infrastructure. This is the only location where Council will consent to such privately owned assets being installed.

- a) Only the portion of the pipeline affected by the exceptional circumstance will be considered for inclusion in the road reserve.
- b) Applicant enters into an agreement with Council for use of the part of the road reserve required for installation of the infrastructure.
- c) Council will, at its discretion, retain the right to terminate the agreement with a minimum of one months notice, and recover costs for non-compliance should the landholder fail to maintain the asset in good condition.
- d) Should Council provide notice under c) the landholder will be required to remove the infrastructure and reinstate the reserve to Council's satisfaction, at their own cost.

3.3 Construction Considerations

Council's preferred construction approach for installation of privately owned assets is to bore under roads. However, it is acknowledged this is sometimes not possible and in such cases, trenches may be the only reasonable alternative.

Requirements for construction will be outlined in detail during the application process and will be controlled through the issuing of a Works Within A Road Reserve Permit.

3.4 Payment of Fees

The costs associated with the generation and application of the Section 173 agreement onto a beneficiaries land title will be borne by the applicant.

3.5 Ongoing Obligations

Council requires landowners to:

- Inspect the asset per timelines set out in the Section 173 Agreement, depending on the road classification
- Maintain public liability insurance to Council's satisfaction

Appropriate management frameworks are crucial within road reserves given the risk associated to communities and Council should incidents/accidents occur.

Council will rigorously and proactively ensure that private assets within road reserves are compliant with the principles contained within this policy and will impose penalties under Section 63 of the *Road Management Act 2004* should it be required.

4. POLICY REVIEW

Council will review this policy as required but always within two years after a general election of the Council.

At the time of review, this policy was compliant with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

5. FURTHER INFORMATION

Members of the public may inspect all policies at Gannawarra Shire Council's Kerang and Cohuna office or online at www.gannawarra.vic.gov.au.

Any enquiries in relation to this policy should be directed to the Director Infrastructure Services on (03) 5450 9333.

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