

# Private Assets in Road Reserves

<b>Council Policy Number</b>	<b>132</b>
Date adopted	19 May 2020
Scheduled for review	May 2023



## 1. Purpose

To define the criteria and requirements under which private assets will be permitted into the road reserve.

## 2. Definitions

Syndicate / cooperative	An association owned, controlled and used by its members to undertake a duty or transact specific business. Campaspe Shire Council ('Council') will require the syndicate / cooperative to be a registered legal entity with the Australian Securities and Investment Commission ('ASIC').
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 General Manager Infrastructure Services, with support provided by the Governance Manager. This assessment is required to be balanced with the requirement of Council to protect the road reserve as outlined in s.4d of the <i>Road Management Act 2004</i> .
Section 173 Agreement	is a legal contract allowed under s.221 of <i>Road Management Act 2004</i> and s.173 of <i>Planning and Environment Act 1987</i> that outlines rights and obligations and is attached to title of private land.
Road reserves	means all of the area of land that is within the boundaries of a road.
Statutory service providers	authorities empowered under an Act with providing utility services such as power, gas, water and telecommunication infrastructure.
Responsible road authority	means the road authority which has operational functions as determined in accordance with s.37 of the <i>Road Management Act 2004</i> . For the purposes of this policy the responsible road authority is Council.
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.
Asset	a physical component of a facility which has value, enables services to be provided and has an economic life of greater than 12 months.
Asset Owner	for the purposes of this Policy the asset owner should be read as an Infrastructure Manager as per the <i>Road Management Act 2004</i> .
Works within Road Reserves permit	evidences the final approvals for work that, once received, allows works within the road reserve to commence.

### 3. Policy Statement

Campaspe Shire Council ('Council') is responsible for the provision and maintenance of local roads infrastructure.

All roads have a defined road reserve which is owned or managed by Council under the *Local Government Act 1989* and the *Road Management Act 2004*. Under section 34 of the *Road Management Act 2004* Council 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."*

Council must minimise, as far as is reasonably practicable, adverse impacts on the provision of utility services. As the road authority, Council co-ordinates the installation of infrastructure.

It is acknowledged that the use of the road must be considered alongside other factors such as economic benefit and social need. This Policy intends to provide a framework to enable such needs to be balanced with the protection of the primary purpose of the road.

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.

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 and privately owned syndicates / cooperatives do not enjoy this right.

Maintenance obligations are imposed on all owners of infrastructure in a road reserve through the *Road Management Act 2004* and other Acts including 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.

#### 4.1 Framework

Applications to install private assets in road reserves may be submitted by single landowners or a syndicate / cooperative of landowners. Council will apply the same principles to either ownership model.

##### 4.1.1. Legal Framework

A legal agreement under either Section 121 of the *Road Management Act 2004* or Section 173 of the *Planning and Environment Act 1987* will be required to be entered into by each and every beneficiary landowner prior to approval of works in road reserves. The provision of private assets is usually for the benefit of the proponent and it is appropriate that obligations should be transferred to the benefitting entity or person to ensure integrity of the management framework.

The agreement will require:

- a. Inspection requirements: For assets installed within collector road reserves, inspections will be required every six weeks and for assets installed within access road reserves inspections will be required every 18 weeks. The applicant will need to document the inspections to the satisfaction of the responsible road authority. At the time of a permit being issued the road designation will be identified to the applicant.
- b. Maintenance requirements: includes the execution of all works of any description which are required to keep the road and installed infrastructure in the state of utility determined in accordance with the *Road Management Act 2004* or any other Act deemed applicable.
- c. Public liability insurance of \$10,000,000 and noting Council's interests (or such increased amount as may be periodically advised in writing by Council) to be held and kept current by the benefitting landowner all at the benefitting landowner's cost. Failure to demonstrate ongoing insurance can lead to a requirement to have the asset removed at owner's expense.
- d. Renewal and reinstatement of the road infrastructure/road reserve in the event of failure to meet the agreement conditions or should Council determine the infrastructure is no longer required

Syndicate/cooperative ownership models shall require all participating landowners to enter into individual agreements with Council. The syndicate/cooperative shall be responsible for ensuring all beneficiaries agree to enter into Council's offered agreement prior to their application and at their own cost.

#### 4.1.2. Design Considerations

Council will require any assets within road reserves to be installed "fence to fence" between adjoining property boundaries and running perpendicular across roads. This limits the impact of construction on the road reserve while allowing reasonable access to the requesting individual or group. In circumstances where it is clearly demonstrated that it is not possible to construct the new asset perpendicularly across the road reserve, a maximum offset of 2 metres, from the perpendicular, will be accepted. This offset must be clearly marked on site by the use of marker posts located on each fence line.

Required technical specifications regarding design, annual maintenance, depth, materials and location requirements will be outlined to the applicant by Council's Road Services Coordinator.

Assets will be required to be installed underground.

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:

- a. 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.
- b. Only the portion of the pipeline affected by the exceptional circumstance will be considered for inclusion in the road reserve;
- c. Applicant enters into a licence at their own cost for use of the part of the road reserve required for installation of the infrastructure.
- d. An annual licence fee will be applied on the basis of the user pays principle and will be determined annually in Council's budget.
- e. Council will, at its discretion, be able to terminate the licence with a minimum of one months' notice, with no compensation available to the licensee / lessee;
- f. Should Council provide notice under e) the licensee will be required to remove the infrastructure and reinstate the reserve to Council's satisfaction, at their own cost.

#### 4.1.3. Construction Considerations

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

#### 4.1.4. Existing Longitudinal Assets identified for decommissioning by the Water Authority

Council may be approached by private landowners or syndicates to purchase existing longitudinal assets within the road reserve owned by the Water Authority and identified for decommissioning. In these instances, Council will require (in order of preference):

- a. That the Water Authority decommissions the asset and reinstates the road reserve to its original condition. Council will then accept an application to install an underground privately owned longitudinal asset to be assessed in accordance with the framework already outlined within this policy; or
- b. The landowner to enter into an arrangement where the Water Authority maintains ownership of the asset that is in the road reserve; or

The above options are dependent upon an understanding as to the impact of the water asset on the safety and function of the road (current and future proposed) and/or Water Authority and Department of Sustainability and Environment consent. Council will work through all the above alternatives to seek to facilitate an appropriate outcome in these specialised instances.

#### 4.1.5. Ongoing Obligations

Council requires owners to annually provide:

- a. Copies of inspection records
- b. List of beneficiaries (if syndicate / cooperative); and
- c. Certificate of Currency of Public Liability insurance.

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 water 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. Exclusions

Exclusions are available for letterboxes which are not placed in such a way as to be an unreasonable obstruction or road safety risk or are part of a building permit.

#### 5. Human Rights

This policy has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

#### 6. Related Legislation

*Road Management Act 2009*

*Local Government Act 1989*

*Local Government Act 2020*

*Planning and Environment Act 1987*

#### 7. Related Policies, Procedures and Strategies

Nil

#### 8. Attachments

Nil

#### 9. Review Period Responsible officer

Three years

Asset Manager

#### 10. Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter the policy, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

#### 11. Approval History

Adopted	18 October 2011	Minute Book Reference No 18278 (item 13.10)
Revised	18 September 2012	Minute Book Reference No 1265 (Item 4.26)
Revised	19 August 2014	Minute Book Reference No 885 (Item 6.4)
Revised	18 August 2015	Minute Book Reference No 905 (Item 6.2)
Revised	13 September 2016	Minute Book Reference No 830 (Item 6.8)
Revised	20 March 2018	Minute Book Reference No 486 (Item 7.1)
Revised	19 May 2020	Minute Book Reference No 2059 (Item 9.4)
Revised	1 March 2021	Administrative update to apply consistent reference to Campaspe Shire Council ('Council')

Chief Executive Officer: ..... *[Signature]* .....

Date: ..... *3/3/2021* .....

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