

# Private Assets in Road Reserves Policy



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## 1. Purpose

The purpose of this policy is to define the criteria and requirements under which private assets will be permitted into the road reserve.

## 2. Scope

Council as the road Authority may enter into an agreement with the owner or occupier of land adjacent to one of Council's roads, or any other person for the performance of works on a road which may benefit that person.

Such an agreement can be incorporated into an agreement under section 121 and Section 173 of the road management act 2004 and shall include the following provisions.

- a) Payment for the conduct of the work
- b) Future management in respect of ongoing maintenance and risk allocation

This policy applies to the Councillors and employees (including full time, part time, casual employees, agency staff and students), and Community Asset Committees created under Section 65 of the Act. The policy is also applied in the management of contractors, volunteer groups, and consultants of Campaspe Shire Council.

## 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 and maintenance 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."*

Upon Mutual written agreement between Council and the department of Transport and planning (DTP) previously known as VicRoads. Council might be responsible (from time to time) for the maintenance/renewal of parking bays within roads owned by Public Transport Victoria (PTV), especially when they are located within the Township zone.

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. They are considered as Exceptional Circumstances.

Private individuals, privately owned syndicates / cooperatives, and entities alike, 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 relevant 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 have access to appropriate levels of insurance coverage should legal proceedings be undertaken against them.

#### 4. Principles

The principles supporting this policy are:

##### 4.1. Sustainability

This is at the heart of everything we do. Sustainability is a key factor in planning for future land use, advocating for additional educational facilities, approving a development, or making decisions around how we use our infrastructure.

#### 5. 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.

##### 5.1. 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 by Council 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 interest (or such increased amount as may be periodically advised in writing by Council) is 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 the owner's expense and the 173 and 121 agreements revoked
- 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.

##### 5.2. 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, may 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' representative.

Assets will be required to be installed underground should the asset type and specification stipulates otherwise, then, further assessment will be conducted by Council officers before the installation/placement of such an asset can or cannot be approved (pending conditions set by Council in this regard).

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 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 (or any other private infrastructure asset) affected by the exceptional circumstance will be considered for inclusion in the road reserve.
- c. An annual licence fee will be applied on the basis of the user pays principle and will be determined annually in Council's budget.

### 5.3. 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.

### 5.4. 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
- c. Pending an asset condition report provided by water authority, Council might allow private landowners and/or beneficiaries to apply for a 173 agreement with Council should they take over ownership from a water authority.

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 Energy, Environment and Climate Action (DEECA) consent. Council will work through all the above alternatives to seek to facilitate an appropriate outcome in these specialised instances.

### 5.5. Ongoing Obligations

Council requires owners to annually update and 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 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.

## 6. 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.

Approved Community installations such as murals, sculptures etc.in Council Road reserves, that are community owned assets covered under a Council issued access and maintenance agreement. This will require Council Executive approval.

## 7. Definitions

Terms and definitions used in this policy include:

Term	Details
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 <i>Australian Securities and Investment Commission</i> ('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 Director Infrastructure, with support provided by the Manager Governance & Risk. 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 & 121 Agreements	is a legal contract pursuant to s.173 of <i>Planning and Environment Act 1987</i> and s.121 of <i>Road Management Act 2004</i> that outlines rights and obligations of the landowner and is attached to the title of private land.
Road reserves	means all 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 issued by Council, allows works within the road reserve to commence subject to any conditions listed on the permit.

## 8. Acknowledgements

### 8.1. Traditional Owners

The Shire of Campaspe is the traditional lands of the Dja Dja Wurrung, Taungurung and Yorta Yorta Peoples. We respect and acknowledge their unique Aboriginal cultural heritage and pay our respect to their ancestors, descendants and emerging leaders as the Traditional Owners of this country. We acknowledge their living culture and their unique role in the life of this region.

## Policy Information

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