

POLICY TITLE PRIVATE ASSETS IN ROAD RESERVES

POLICY NUMBER CPOL/INFRA517

1. PURPOSE

To define the criteria and requirements under which private assets are allowed in the road reserve.

2. SCOPE

Council seeks to provide a consistent and efficient process for the way in which private assets are allowed to be placed in Council's road reserves.

3. POLICY

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

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 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, however some are private landowners.

Prior to the installation of private infrastructure in Council's road reserve, an executed Section 173 agreement under the Planning and Environment Act 1987 is to be entered into. This document is a legally binding agreement between Council and the landowner (tied to title). The agreement sets out the arrangements for:

- ongoing ownership and use of an asset;
- works, maintenance; and
- risk allocation in respect of the asset because it is located in, on or under the road.

4. RELATED POLICIES/PROCEDURES/DOCUMENTS

PRO/INFRA517 Private Assets In Road Reserves Procedure
Section 173 Agreement
Works Within Road Reserve Permit

5. RELATED LEGISLATION

Road Management Act 2004
Local Government Act 1989
Planning and Environment Act 1987

6. DOCUMENT HISTORY

Version Number	Issue Date	Description of Change
1.0	June 2019	Initial release
1.1	December 2020	Review

Signed: Bill Moar Mayor Date: 05/01/2021

PROCEDURE TITLE PRIVATE ASSETS IN ROAD RESERVES

PROCEDURE NUMBER PRO/INFRA517

ENABLING POLICY/DIRECTIVE

Private Assets in Road Reserves CPOL/INFRA517

ENABLING LEGISLATION

Road Management Act 2004
Local Government Act 1989
Planning and Environment Act 1987

1. PURPOSE

The purpose of this procedure is to ensure the criteria and requirements under which private assets are allowed in the road reserve.

2. SCOPE

Swan Hill Rural City 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 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, the 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 does not cover or deal with assets that are installed and/or maintained by a statutory service provider.

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 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.

Prior to the installation of private infrastructure in Council's road reserve, an executed Section 173 agreement under the Planning and Environment Act 1987 is required.

3. DEFINITIONS

Asset:	a physical component of a facility which has value, enables services to be provided.
Exceptional circumstances:	<p>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.</p> <p>The determination of exceptional circumstance will be at the sole discretion of Council's Director Infrastructure. This assessment is required to be balanced with the requirement of Council to protect the road reserve as outlined in s4(d) of the <i>Road Management Act 2004</i>.</p>
Non-road infrastructure:	means infrastructure in, on, under or over a road which is not road infrastructure.
Responsible road authority:	means the road authority which has operational functions as determined in accordance with s37 of the <i>Road Management Act 2004</i> . For the purposes of this policy the responsible road authority is Council.
Road infrastructure:	<p>means the infrastructure which forms part of a roadway, pathway or shoulder, including:</p> <ul style="list-style-type: none">• structures forming part of the roadway, pathway or shoulder; and• 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 s121 of the <i>Road Management Act 2004</i> and/or s173 of the <i>Planning and Environment Act 1987</i> 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 Road Reserve permit:	evidences the final approvals for work that, once received, allows works within the road reserve to commence.

4. PROCEDURE

4.1. Legal Framework

A Section 173 Agreement may 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.

4.2. 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 \$20,000,000 (or such increased amount as may be periodically advised in writing by Council) to be held and kept current.

4.3. 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.

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 or other asset affected by the exceptional circumstance will be considered for inclusion in the road reserve.
- c) Applicant enters into an agreement with Council for use of the part of the road reserve required for installation of the infrastructure.
- d) 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.
- e) Should Council provide notice under clause d, the landholder will be required to remove the infrastructure and reinstate the reserve to Council's satisfaction, at their own cost.

4.4. 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 Road Reserve Permit.

4.5. 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.

4.6. Ongoing Obligations

Council requires landowners to:

- Inspect the asset annually; and
- 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.

5. RELATED POLICIES/PROCEDURES/DOCUMENTS

Section 173 Agreement
Works Within Road Reserve Permit

6. DOCUMENT HISTORY

Version Number	Issue Date	Description of Change
1.0	June 2019	Initial release
1.1	December 2020	Review

Signed: John McLinden CEO Date: 23/12/2020