



LEETON
SHIRE COUNCIL



DRAFT
**PRIVATE ASSETS ON ROAD
RESERVES POLICY**

AUGUST 2022

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REVIEW OF THIS DOCUMENT

This document will be reviewed every 4 years or as required in the event of legislative changes or operational requirements.

Any major amendments to the document must be made by way of a Council Resolution. Minor amendments such as corrections to spelling, changes to wording for improved clarity, formatting and updates to the Appendixes may be made without approval from the Council.

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1. Purpose

The purpose of this policy is to guide staff and land holders through the application process, establishment, and management of privately owned assets on Council road reserves. This policy is designed to provide guidance and consistency when placing and removing infrastructure on road reserves.

The objectives of the policy are to ensure that private assets are:

- Removed from the road reserve, or
- Subject to Council approval, permitted to remain by the adjoining owner entering into an appropriate agreement with Council to ensure public liability, amenity and road function issues are identified and managed.

2. Scope

Leeton Shire Council is responsible for the provision and maintenance of local roads infrastructure. Under the *Roads Act 1993*, Council owns and controls those road reserves not under the control of TfNSW.

Council must manage the road reserve with regard to the primary purpose of section 5(1):

- a member of the public is entitled, as of right, to pass along a public road (whether on foot, in a vehicle or otherwise) and to drive stock or other animals along the public road, and section 6(1):
- The owner of land adjoining a public road is entitled, as of right, to access (whether on foot, in a vehicle or otherwise) across the boundary between the land and the public road.

The provision of infrastructure within the road reserve must not interfere or inhibit these rights of access.

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.

3. Roles and Responsibilities

3.1 General Manager

The General Manager has ultimate responsibility for exercising the functions under the *Roads Act 1993* as road manager for Council.

3.2 Group Manager Operations and Manager Roads & Drainage

Council's roads management team is accountable for ensuring road management functions (provision, funding, maintenance, upkeep and renewal) comply with this policy.

4. Definitions

Road reserve – the area of land between property boundaries including roads, lanes, car parks, footpaths, bridges, reserves and nature strips.

TfNSW – Transport for New South Wales.

5. Principles

The policy requires that privately owned assets will be managed to ensure that: there is no loss of public amenity or safety

- future plans for road realignment or footpaths are not compromised and stormwater drainage is not impeded
- the asset is the subject of a legal agreement and where appropriate, is registered on the property title, and
- the asset owner indemnifies Council against any claim made in relation to the asset.

6. Management of Private Assets

6.1 New pipes, culverts and channels across and along roads

Council may be approached by private landowners or businesses to install private pipelines, culverts and channels (assets) across and along public road reserves. Generally, these assets are to be installed on privately owned land.

Where this cannot be avoided (i.e. where a pipeline needs to cross from one property to another across a road) Council's responsibility is to ensure that these assets should be constructed to a high standard and that they do not become a burden to the community through inappropriate location or construction methods. Under these conditions, Council will require (in order of preference):

- a) The landowner to enter into one of the following arrangements where the private asset owner maintains ownership of the asset that is in the road reserve:
 - i. Easement over the road reserve, or
 - ii. Licence agreement to permit the infrastructure to be placed within the road reserve, or
 - iii. Apply to close the road reserve and purchase the land.

6.2 Existing water supply and drainage pipelines, channels and supporting infrastructure

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

- a) That the entity 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; or
- b) The landowner to enter into one of the following arrangements where the private asset owner maintains ownership of the asset that is in the road reserve:
 - Easement over the road reserve, or
 - Licence agreement to permit the infrastructure to be placed within the road reserve, or
 - Apply to close the road reserve and purchase the land.

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). Council will work through all the above alternatives to seek to facilitate an appropriate outcome in these specialised instances.

6.3 Building/landscaping encroachments

Building and property development and improvement activity over time may lead to infrastructure encroaching into the road reserve. For example:

- a commercial property owner may install a sign on their building façade that enters the road

reserve boundary

- a resident may install concrete pathing or driveway at the front of their property

In these instances, Council will require (in order of preference):

- a) That the encroachment be removed and reinstate the road reserve to its original condition; or
- b) The adjoining landowner or owner of the building to develop an easement over the road reserve at the cost of the land or building owner.

6.4 Temporary structures, encroachments and occupation

Business owners and residents can over time assume occupation of the road reserve (e.g. by using the road or verge outside their property to park business vehicles and plant). This can happen as owner occupied houses become rentals or as home or backyard businesses grow. Temporary parking structures such as concrete or gravel pads tend to be erected within the road reserve to accommodate these vehicles.

- a) In these instances, Council will require (in order of preference):
That the encroachment, structure or vehicles be removed and reinstate the road reserve to its original condition; or
- b) The adjoining landowner or owner of the vehicles enter into one of the following arrangements:
 - If the structure or occupation is short term (i.e. part of road, building or property works for a finite period of time): a licence under Section 138 of the Roads Act, or
 - If the structure or occupation is long term: a licence or lease under Division 2 of the Roads Act.

7. Supporting Documents

Leeton Shire Council Fees and Charges

8. Legislation

Local Government Act 1993
Roads Act 1993
Water Management Act 2000

9. Policy Procedure

9.1 Issuing Leases and Licences over Council Public Roads

There are two types of Lease or Licence that Council as Road Authority can authorise under the Roads Act. Leases and Licences are granted subject to terms and conditions that are set out in the licence agreement and will be subject to the payment of rental. Council cannot grant any Lease or Licence without approval over a road which is a TfNSW road or Crown road.

1. Licence under Section 138 of the Roads Act

A Licence under Section 138 is issued for works and structures on or over a public road and or road reserve. Council cannot issue a Lease for exclusive use under S138 of the Roads Act.

Council will issue a Licence after receipt of an approved S138 application. The S138 application is annexed to the Licence and forms part of the Licence document. Notification and other provisions that are contained under S152 of the Roads Act do not apply to S138 Licences.

2. Lease or Licence under Division 2 – Short-term leases of unused Public Roads Clauses 152-157

A lease or licence under this section of the Act is issued to grant an exclusive or non-exclusive right to occupy and use a road.

The lease or licence under this division must adhere to the following conditions:

- a. Issued only to the owner or lessee adjoining the public road, if in Council's opinion it is not being used by the public.
- b. The term of the lease or licence together with any optional extension period must not exceed 5 years.
- c. State that it may be terminated at any time by the roads authority (Council).
- d. A report should be prepared and Council approval sought for the issue of the Lease/Licence.
- e. Public notice must be published in a newspaper and served on the owner of each parcel of land adjoining the public road.
- f. The notice must give a period for submissions of at least 28 days.
- g. Council may grant the lease or licence only after submissions have been received and the granting of the Lease/Licence must be published in a local newspaper.
- h. Structures cannot be erected or works done under this Lease or Licence. A separate licence under S138 must be issued.

9.2 Closing and Purchasing Council Road Reserves

Councils may close road reserves that are not required as:

- a road for public use (for present or future needs)
- to provide continuity for the road network
- to provide vehicular access to land and another lawful and reasonably practicable access exists

Council recognises that road closures are important where the benefit of incorporating the road within a redevelopment of adjoining land is considered to outweigh the benefit of the public to access the road and public authorities to place and operate infrastructure within the road.

The process for closing a public road reserve is as follows:

1. Confirmation of road status

Before proceeding with the closure process Council requires evidence that the road to be

closed has been gazetted as a Council road. Council outsources this status search to a qualified title searcher who reviews records at Land & Property information. Landholders may engage a title searcher of your choice. If the road is not a Council road or has not been maintained, the closure will be a Crown Land process.

2. Council approval by resolution to close the road reserve

Landholders must submit details of the proposal and evidence of ownership of all adjoining parcels of land. Council will require a map that details ownership and lot and deposited plan numbers for these parcels. If the closure relates to a rationalisation of Murrumbidgee Irrigation (MI) assets a supporting letter from MI will be required to accompany the Council report. A Council Report will then be prepared for Council resolution.

3. Public notification/advertisement of proposed road closure

Once approved by Council notification is sent to adjoining landholders that may be affected by the closure. A notice advising the public of the proposed closing of the public road is published in a local newspaper as a minimum. The notice gives the public and adjoining owners 28 days to respond.

Council must also notify all public authorities of the proposed closure. The response from authorities may take longer than the 28-day period for example Crown Lands will assess the proposal which will take a minimum of 60 days.

Members of the public, adjoining landowners and statutory authorities may object to the road closure. Council must consider all reasonable requests. E.g. adjoining landowners may insist on being granted an easement if it is necessary for their land as a result of the closure, or statutory authorities may require easements to be created over the land for any infrastructure contained within the road.

4. Preparation and registration of a plan of subdivision

Council will engage a surveyor to prepare a road closure plan of subdivision. The plan will identify the area of road to be closed and any easements which the adjoining owners and statutory authorities require. If necessary, Council's solicitors will draft a section 88B instrument to set out the easements required.

The plan of subdivision for the closure will be lodged by Council's Surveyor in conjunction with Council's solicitor. The registration of the plan will create a distinctive certificate of title for the former road. Council will then prepare a notice of the closure in the Government Gazette.

5. Issue of title, valuation and sale of land

Once the Gazette is published, Council must wait a period of 60 days for the Land and Environment appeals process to complete. Subject to no appeals being lodged, Council will then be able to apply for a Certificate of Title and then undertake the sale of the closed road to the landholder. Council will obtain a valuation for the land and instruct its solicitors to prepare a Contract for the Sale of the land at market value to the landholder.

10. Appendix 1 Specific Asset Scenarios

10.1 Fences and gates

Council does not typically support the construction of gates across roads due to the extensive complications which inevitably arise regarding their proper management.

In addition, Council has a responsibility under the Roads Act 1993 to ensure that members of the public can pass along a public road (whether on foot, in a vehicle or otherwise) and to drive stock or other animals along the public road.

10.2 Awnings

- Awnings of flexible material such as canvas are permitted within 450mm from the kerb and a minimum 2.4 metres above footpath level
- When in the fully opened position the retractable awning should be a minimum of 2.4 metres above footpath level.

10.3 Architectural features

- Should be certified as constructed of durable materials compatible with the surface structure to which it is fixed
- Should not reflect sunlight or other light onto the carriageway
- Signage
- Signage above front entry into a premise may project a maximum of 150mm at a minimum height of 2.4 metres above the surface of the footpath
- Signage not setback a minimum of 750mm from the adjacent face of kerb must be at a minimum height of 5 metres from the surface of the road or laneway
- Signage setback 750mm or more from the face of the kerb may be permitted to a minimum height of 2.6 metres above the surface of the footpath
- In a laneway with a narrow footpath, the setback of a sign may be reduced to 450mm from the face of the kerb at a height of 2.7 metres from the surface of the footpath
- The sign and supporting structure should not reflect sunlight or other light onto the carriageway.

10.4 Auto Teller Machines (ATMs)

- ATMs may be permitted to project 100mm maximum to a minimum height of 685mm from the surface of the footpath
- There must be no sharp edges
- The minimum footpath width at the ATM location should be 1.8 metres with a minimum pedestrian passageway of 1.5 metres at any local obstruction, such as a streetlight or tree
- The location of the ATM should be as far as possible away from a street corner (minimum of 3 metres).

10.5 Exhaust ducts and service pipes

- Exhaust ducts and service pipes are not permitted to project beyond the street alignment below 2.7 metres above the footpath surface
- Exhaust ducts and service pipes must be setback a minimum of 450mm from the face of the adjacent kerb, or where located directly over a road or laneway when there is no footpath, the exhaust duct or service pipe is not to protrude more than 300mm
- Exhaust outlets should have a minimum horizontal clearance of 6 metres to any adjoining window or air intake grille above the base of the exhaust grille or outlet.

10.6 Handrails to stairs or ramps

- Handrails must be rounded with no sharp edges
- Handrails must comply with the requirements of Australian Standard (AS) 1428.1. 'Design for Access and Mobility, Part 1: General Requirements for Access – New Building Work.'

10.7 Cladding

- The cladding is adequately drained to a legal point of discharge
- The cladding does not project over the street alignment below a height of 2.5 metres above the footpath
- Above this height the cladding does not project more than 50mm beyond the street alignment
- The cladding does not reflect sunlight or other light at eye level of pedestrians or drivers of vehicles
- Council may approve applications to re-clad existing buildings from ground level where the new cladding projects a maximum of 50mm beyond the street alignment.

10.8 Gas heaters

- The gas heaters may be permitted to project 300mm maximum at a minimum height of 2.4 metres from the surface of the footpath
- Minimum setback from the adjacent face of kerb must be 750mm
- Where no footpath exists or the footway is less than 1050mm wide, the minimum clearance from the surface of the roadway shall be 5.0 metres

10.9 Banners, decoration, and artwork hung over public places

Please contact Council prior to design and construction of any banner, decoration or artwork that will be hung over a public place to discuss material, finish, colour and reflectivity requirements.

The wire or banner has a minimum clearance from the road surface of 5.5 metres at its lowest point and the wire must be removed if not supporting decorations

- The fixings to buildings are to the approval of the building owner and a civil or structural engineer
- The banner is designed by an engineer for the appropriate wind loads
- Any hanging objects do not have hard or sharp edges.

10.10 Temporary structures

Temporary Structures such as road arches, scaffolds, gantries, fences and gates, hoardings or the like require a completed S138 Road Opening/Activity Permit Application.

10.11 Boundary traps

Council requires sewer boundary traps for new buildings to be located within the property boundary. Architects and engineers should be made aware of this requirement so that modifications are made at the planning stage.

Should the building cover the whole of the site, a recess shall be provided in a wall of the building in accordance with the requirements of the relevant sewer authority so the boundary trap can be accessed at all times.

Council will agree to boundary traps being located within the road reserve for buildings undergoing refurbishment, where the shell of the building is to remain intact and where the boundary trap is already within the road reserve.

10.12 Water and fire services

Except in the case of a private fire service, all other valves and branches must be located within the property boundary except for a single valve at the main.

Only isolated stop valves are permitted in the road reserve. All other valves, branches and meters must be located within the property boundary.

The above applies to all new buildings and where reasonably practicable to all new services installed in an existing building.

10.13 Tactile indicators

The tactile indicator requirements can be well adapted to new buildings, as a setback to any proposed stairway, escalator, travelator and ramp can be easily accommodated in the design. However, for existing buildings, where the stairway, escalator, travelator or ramp begins at the street alignment, the retro fitting of tactile indicators will involve the installation of tactile indicators on Council's footpaths.

Council insists on a uniform approach to the installation of ground surface tactile indicators in the road space across the municipality. As such the installation of tactiles will only be approved when they comply with Council's specifications:

- The layout of tactiles must be site specific and mindful of the visual impact of the tactiles in the road reserve
- The tactiles must be designed and installed in accordance with AS1428 Design for Access and Mobility.

10.14 Trees/lawns

Refer to Council's Tree Management Policy.

10.15 Driveways

A completed S138 Road Opening/Activity Permit Application is required to install or remove a driveway

- Driveways must be constructed in accordance with Council's standard drawings. Refer to Council's Engineering Guidelines for Subdivisions and Development Standards.
- The property owner benefiting from a driveway must maintain and keep in good repair the driveway and undertake and bear all costs of any works required.
- The property owner must arrange and pay for the cost of relocation or modification to any service such as telecommunications pits, water valve pits, covers, etc.

10.16 Garbage Bins

Council requires garbage facilities for all new buildings are located within the property boundary. Architects and engineers should be made aware of this requirement so modifications are made at the planning stage.

Should the building cover the whole of the site, a suitable space inside the building must be provided to facilitate the storage of garbage consistent with the property use.

Council may agree to garbage facilities being located within the road reserve where necessary, for buildings undergoing refurbishment or change of use and where the shell of the building is to remain intact. Any such approval are subject to the following:

- Where bins cannot be practically accommodated within the property boundary the property owner/occupier must seek approval from Council's Operations department and complete a S138 Road Opening/Activity Permit Application

10.17 Plant/Sub-station/Cabinet Doors

Doors for personnel entry and egress must not open into the road reserve.

Doors for access to plant/substation areas may be permitted to open into the road reserve if the doors:

- Are self-closing and can be held fully open against the building wall for the time personnel are occupying the facility
- Have a minimum clearance of 150mm from the footpath surface
- Open onto a footpath with a minimum width of 1500mm
- The doors must be kept locked when not in use with the keys made available to approved personnel only.

10.18 Access pits/hatches

Generally only public utility/service authority pits are permitted within the Road Reserve.

Licensed premises with existing hatches for the delivery of kegs to basements must conform with the following:

- It is the building owner's responsibility to maintain and keep in good repair all hatches
- Hatches and frames must comply with AS3996 Access Covers and Grates Requirements
- A S138 Road Opening/Activity Permit Application is required for removal of hatches
- If permanently removed the hatch and supporting structure must be removed for a depth of 750mm and a new structural slab or plate cast satisfying minimum imposed loads as above
- The surfaces must be rendered waterproof and damp-proof to prevent any dampness in the basement.

11. Appendix 2 – Assets Not Permitted

- Balconies
- Canopies and verandas
- Air conditioning units
- Flagpoles/antennae
- Street furniture
- Bollards
- Pavement lights
- Monuments
- Post boxes
- Real estate signage
- Retaining walls
- Entry Steps/Ramps