

DRAFT Private Infrastructure in Road Reserves Policy

Reference Number

Authorised by:	Internal/External:	External
Date:	Minute No:	
Review timeframe:	4 years	
Review due date:		
Department:	Property & Place (Infrastructure & Place)	
Document Owner:	Kellie Scholes	

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1. Policy Objective

To provide principles to guide Council decision-making in approving and managing the installation of private infrastructure within road reserves.

2. Risks being assessed

This Policy addresses the following risks:

- Private infrastructure interfering with the primary purpose of the public road reserve, including the public's right to pass and the right of adjoining landowners to access their land.
- Private infrastructure constraining Council's ability to plan, manage, maintain, upgrade, realign, or widen the road network in accordance with its responsibilities as a Road Authority.
- Alienation of public land for private benefit, reducing future road reserve management flexibility.
- Inconsistent or inequitable assessment of applications for private use of the road reserve.
- Failure to recover costs where private infrastructure is abandoned or removed.
- Legal or regulatory non-compliance in the management of road reserve approvals.

3. Scope

This Policy applies to the installation, operation and maintenance of private infrastructure within, on, under or over a public road reserve, including pipelines, cables, fibre optic infrastructure, electricity infrastructure, rail infrastructure, bridges, conveyors and other infrastructure constructed for the benefit of a private entity.

This Policy does not apply to:

- Temporary construction compounds, laydown areas, stockpile areas or other temporary uses of the road reserve approved by Council for a defined construction period.
- Infrastructure installed or maintained by a statutory service provider operating under legislative authority.
- Assets that facilitate a landowner's right of access across the road reserve boundary under Section 6 of the Roads Act 1993, including driveways, stormwater pipes, and footpaths.

4. Definitions

Term	Definition+
Application	Formal submission seeking approval.
Asset	A physical component of a facility which has value and enables services to be provided.

Term	Definition+
Easement	A right applying to land that enables a parcel of land to have the use of other land in different ownership for a specific non-exclusive purpose. Without the easement, the use would constitute a trespass or nuisance.
Fee Simple	The right to own a building or piece of land without time limit.
Lease	A legal agreement under Section 149 of the <i>Roads Act 1993</i> granting a person or entity the right to occupy a defined portion of the road reserve for a specified purpose and term.
Licence	A non-exclusive authority granted by Council permitting the occupation of part of a road reserve for a specified purpose, subject to conditions imposed by Council, issued under Section 138 of the <i>Roads Act 1993</i> .
Private Entity	Any individual, company, partnership, trust, incorporated association, organisation or other legal person that is not a statutory service provider and seeks to install, operate, maintain or occupy infrastructure within a public road reserve.
Private Infrastructure	Infrastructure installed within the road reserve by or for the benefit of a private entity, not including infrastructure installed by a statutory service provider under legislative authority.
Road Reserve	The full extent of land dedicated, reserved or used for road purposes, extending from boundary to boundary, including the carriageway, shoulders, verges, footpaths, shared paths, drainage infrastructure, bridges, tunnels, causeways and any other work or structure forming part of the road, together with the airspace above and the land beneath the road surface.
Section 138 Permit	A consent issued by Council under Section 138 of the <i>Roads Act 1993</i> authorising a person to erect a structure or carry out works in, on, or over a public road reserve.
Statutory Service Provider	Authorities empowered under an Act with providing utility services such as power, gas, water, and telecommunications infrastructure.
Sub-licence	An arrangement under which a licensee permits another person or entity to use or occupy infrastructure or part of a road reserve, subject to the terms of the primary licence.
Unformed Road	A public road that has been dedicated or established but has not been constructed to a standard suitable for public vehicular access.

5. Policy Statements

5.1 Roads and Road Authorities

5.1.1 Legislative Framework

The *Roads Act 1993* (Roads Act) is the primary legislative instrument governing the management of public roads in NSW. Council exercises its functions as a Road Authority under the Roads Act and any other applicable Act or law.

The key provisions of the Roads Act relevant to this Policy include:

- Part 2 — Opening of public roads;
- Part 6 — Road work;
- Part 9 — Regulation of works, structures and activities; and
- Part 10 — Other road management functions, specifically Division 1 (Functions with respect to land generally)

5.1.2 Road Classification

Roads are classified under Part 5 of the Roads Act as main roads, State highways, freeways, controlled access roads, secondary roads, tourist roads, and tollways. Road classification does not affect the Road Authority in which a road is vested.

5.1.3 Road Authorities

Council is the Road Authority for all public roads within its local government area (LGA), except freeways and Crown roads. Public roads are vested in fee simple in Council under Section 145(3) of the Roads Act.

Transport for NSW (TfNSW) is the Road Authority for all freeways. Crown Lands administers all Crown public roads on behalf of the Minister administering the *Crown Lands Act 1989*.

Council retains responsibility for the road reserve of State roads, including service roads, footpaths, and noxious weed control, except where TfNSW has agreed in writing to assume responsibility for specific assets, works, or activities.

5.2 Council's Responsibilities

Council has primary responsibility for the provision, planning, and management of the local road network. Council must manage the road reserve in accordance with the primary purpose established by the Roads Act, which provides that:

- a member of the public is entitled, as of right, to pass along a public road (Section 5(1)); and
- the owner of land adjoining a public road is entitled, as of right, to access across the boundary between the land and the public road (Section 6(1)).

Council must ensure that private infrastructure in the road reserve does not interfere with or inhibit these rights. Council must balance the primary purpose of the road reserve against broader economic and social considerations.

Development in the road reserve is regulated by the *Environmental Planning and Assessment Act 1979*, applicable State Environmental Planning Policies, and Council's Local Environmental Plan. Council is the consent authority for some development within its LGA.

Only Council, as the Road Authority, may regulate traffic within the road reserve for the purposes of road works or other activities under Section 115 of the Roads Act. No other entity has the authority to regulate traffic for the purpose of undertaking works within the road reserve, unless expressly permitted by another Act or law.

5.3 Statutory Service Providers

Certain utility and infrastructure providers have rights, powers, and obligations under specific legislation to install, maintain, operate, or access infrastructure within the road reserves. These rights may apply independently of this Policy and may limit or remove the requirement to obtain the consent of Council as the roads authority. Examples include, but are not limited to:

- Electricity network operators operating under the Electricity Supply Act 1995;
- Telecommunications carriers operating under the Telecommunications Act 1997 (Cth);
- Pipeline operators operating under the Pipelines Act 1967; and
- Other authorities or entities granted statutory powers under relevant legislation.

Where statutory rights apply, Council acknowledges those rights and will work collaboratively with the relevant provider to facilitate the planning, design, construction, operation, maintenance, and renewal of infrastructure within the road reserve (where required).

This Policy is intended to support consultation, coordination, and the protection of road assets and public safety. Nothing in this Policy is intended to limit, alter, or override any rights, powers, obligations, or exemptions conferred by legislation.

5.4 Works in the Road Reserve

Council must give consent before any person erects a structure or carries out works in, on, or over a local public road reserve, pursuant to Section 138 of the Roads Act. This includes digging up or disturbing the road surface, removing or interfering with a structure or tree, pumping water onto the road from adjoining land, or connecting a road to a classified road.

Council issues consent by way of a permit under Section 138. Consent may be granted generally or for a particular case, may relate to a specific structure or class of structures, and may be granted on conditions Council considers appropriate.

In relation to private infrastructure:

- A Section 138 permit authorises construction works, and fees are calculated in accordance with Council's adopted Fees and Charges; and
- Consent for the ongoing occupation of the road reserve is granted under Section 138 of the Roads Act in the form of a non-exclusive licence. Occupation charges are determined in accordance with Section 5.7 of this Policy and Council's adopted Fees and Charges.

Where required by Council, the private entity must enter into a Deed of Agreement governing the undertaking of works within the road reserve.

The Deed of Agreement is generally developed having regard to the *Model Agreement for Local Councils and Utility/Service Providers* (NSW Streets Opening Coordination Council) and may include provisions relating to process and work practices, notification, execution of works, restoration, coordination of works, utility services, traffic management, tree management, and dispute resolution.

Council may revoke consent at any time, for any reason, by written notice served on the holder of the consent, under Section 140 of the Roads Act.

5.5 Design, Location and Construction of Private Infrastructure

The placement of the private infrastructure will be executed in a manner that ensures it does not obstruct or compromise the intended functionality of the public road reserve.

All private infrastructure and works within the road reserve must be designed, located, and constructed in accordance with:

- The *Guide to Codes and Practices for Street Openings* (NSW Streets Opening Coordination Council), as amended from time to time, including utility corridor allocations, minimum depth of cover requirements, and separation distances.
- Council's Planning and Design Specifications and Construction Specifications, as published on Council's website and amended from time to time.
- Compliance with the minimum requirements of AUS-SPEC.

Council will generally not permit private infrastructure to be located beneath a sealed carriageway. Exceptions may only be considered where crossing the carriageway is unavoidable, such as to connect infrastructure located on opposite sides of the road reserve.

Council will have regard to the location, classification, function, and construction standard of the road reserve, including whether the carriageway is sealed or unsealed, together with the availability of space within the road reserve.

Applications within urban areas, townships, industrial areas, and other locations where future utility, drainage, transport, or public domain infrastructure is foreseeable may be subject to a higher level of scrutiny due to the limited capacity of the road reserve. Where Council considers it reasonable, having regard to the existing and future use of the road reserve, Council may refuse an application where the proposed private infrastructure could constrain future infrastructure delivery, increase maintenance obligations, or reduce the efficient use of the road reserve.

5.6 Leases or Easements Within the Road Reserve

Council may lease the airspace above, or land below the surface of, a public road reserve under Section 149 of the Roads Act. A lease cannot be granted without the approval of the Secretary of the Department of Planning and Environment, who must be satisfied the lease is consistent with existing rights of passage and access.

Council will not grant a lease or easement for private infrastructure within a road reserve except in exceptional circumstances where Council is satisfied that a non-exclusive licence is not the most appropriate mechanism and that the lease or easement will not materially restrict the future management, maintenance, realignment, widening, or use of the road reserve.

Where Council determines that a lease, easement, or other property interest is the most appropriate mechanism to facilitate private infrastructure within a road reserve, the principles, assessment criteria, occupation charges, and management requirements outlined in Section 5.7 will generally apply, unless Council determines that an alternative approach is warranted having regard to the nature of the infrastructure, the extent of occupation, statutory requirements, or the public interest.

5.7 Licences within the Road Reserve

Consent under Section 138 of the Roads Act in the form of a non-exclusive licence is the preferred mechanism for authorising the ongoing occupation of the road reserve by private infrastructure.

5.7.1 Licence Principles & Assessment Requirements

Council will only consider a licence where:

- alternative locations, including private land and existing easements, have been considered;
- the land is surplus to Council's current and foreseeable operational requirements;
- the licence will not unreasonably constrain any identified or reasonably foreseeable future road, drainage, utility, active transport, or other public infrastructure requirement;
- the proposed use does not alienate land from public use in a way that has a significant negative impact on the community;
- the proposed use does not conflict with Council's planning controls, local amenity, or streetscape;
- the land does not constitute valuable open space, form part of an ecological or wildlife corridor or contain habitat for threatened species, populations; or ecological communities; and
- there is no significant existing or potential future public access that would be alienated.

Council will only permit private infrastructure within an unformed public road reserve where Council is satisfied that no reasonable alternative exists and that the application will not compromise the future potential public use of the corridor.

Council will generally not permit duplicate private infrastructure within the road reserve. Where existing private infrastructure can reasonably accommodate additional users, Council will require shared-use, co-location, or sub-licensing arrangements in preference to the installation of additional private infrastructure. The private entity must demonstrate, to Council's satisfaction, that shared use of existing private infrastructure is not reasonably practicable before Council will consider an application for duplicate private infrastructure. This Policy applies equally to sub-licences.

As part of a licence application, the private entity must provide sufficient information to enable Council to assess the suitability of the proposed private infrastructure within the road reserve and determine whether the application can comply with the requirements of this Policy.

The information must include a concept design showing the proposed location and extent of the infrastructure within the road reserve, including horizontal and vertical clearances, and demonstrating compliance with Section 5.5 of this Policy.

The concept design must identify, where relevant:

- the proposed alignment and extent of the private infrastructure;
- the horizontal and vertical location of the infrastructure within the road reserve;
- compliance with utility corridor allocations, depth of cover requirements and minimum separation distances;
- existing road reserve infrastructure, including carriageways, shoulders, driveways, footpaths, shared paths, culverts, drainage infrastructure, bridges, and other structures;

- traffic signs, street lighting, street furniture; and other road reserve assets;
- existing utilities and services identified through Dial Before You Dig (or equivalent utility searches);
- proposed construction methods and construction standards;
- proposed arrangements for construction, operation; and maintenance; and
- any other information reasonably required by Council to assess the application.

The private entity must undertake consultation with relevant utility providers, adjoining landholders, and any other stakeholders identified by Council as having an interest in the application, to ensure the proposed infrastructure location does not conflict with existing or planned infrastructure, unreasonably impact adjoining landowners, or compromise the current or future operation, maintenance, or upgrade of infrastructure and road assets.

5.7.2 Licence Administration & Terms

All licences must address, at a minimum:

- **Duration:** The licence term, including any option to renew, will align with the term of the development approval granted under the *Environmental Planning and Assessment Act 1979*.
- **Purpose:** The licence must specify the permitted purpose and restrict incompatible uses.
- **Fees & Charges:** Occupation charges are payable in accordance with Section 5.7.3 of this Policy and Council's adopted Fees and Charges.
- **Private Infrastructure Maintenance:** The licensee is responsible for maintaining all private infrastructure in a safe and serviceable condition for the full duration of the licence.
- **Records and As-Constructed Information:** The licensee must provide as-constructed drawings and spatial data for the private infrastructure in a format acceptable to Council within a timeframe specified by Council following completion of construction. The information must accurately identify the location, extent, depth; and relevant attributes to enable incorporation into Council's asset and geographic information systems.
- **Road Reserve Maintenance:** Where the presence of private infrastructure restricts Council's normal maintenance practices, requires additional protection measures, or results in additional costs being incurred by Council, those costs are the responsibility of the licensee.
- **Asset Protection:** The licensee must take all reasonable measures to avoid damage to Council and other assets, utility services; and adjoining property. Where damage attributable to the installation, operation, maintenance, repair, replacement, relocation; or removal of the private infrastructure occurs, the licensee must repair or reinstate the affected asset to the satisfaction of Council or the relevant asset owner.
- **Environmental Considerations:** The licensee must take all reasonable measures to avoid, minimise; and remediate environmental impacts arising from the installation, operation, maintenance, relocation; or removal of the private infrastructure.
- **Make-good:** Upon expiry, termination or surrender of the licence, the licensee must decommission the private infrastructure and restore the road reserve to the satisfaction of Council. Unless otherwise approved by Council, all active infrastructure, including cables, pipes, equipment; and associated services, must be removed. Council may permit inert conduits, sleeves, casings; or other infrastructure to remain in place where it is satisfied that the infrastructure has been permanently decommissioned, presents no ongoing risk to public

safety or road reserve operations, and its removal would provide no material benefit or may result in unnecessary disturbance to the road reserve or existing infrastructure.

- Insurance: The licensee must maintain public liability insurance for the duration of the licence in an amount not less than \$50 million (or such other amount as determined by Council), noting Council as an interested party.
- Security: Council requires all licensees to provide a security deposit, bond, bank guarantee; or other form of financial security acceptable to Council. The form, amount; and conditions of the security will be determined by Council having regard to the nature, scale, location, and risk profile of the infrastructure.
- Indemnity: The licensee indemnifies Council against all claims, demands, actions, losses, damages, costs, and expenses arising from or in connection with the installation, operation, maintenance, repair, replacement, or removal of the private infrastructure.
- Relocation: Where Council reasonably requires the relocation of private infrastructure to facilitate road works or other public purposes, the licensee must relocate private infrastructure at their own cost. Council will provide reasonable notice of any proposed works, having regard to the nature, urgency, and complexity of the required relocation, and will, where practicable, consult and coordinate with the licensee to minimise disruption, facilitate efficient planning, and identify opportunities to align relocation works with the licensee's planned maintenance, renewal, or upgrade programs.
- Assignment: A licence must not be assigned, transferred, novated, or otherwise disposed of without the prior written consent of Council. This requirement does not apply where the infrastructure becomes vested in, or is otherwise assumed by, a statutory service provider exercising rights or powers conferred by legislation.
- Termination: In accordance with Section 140 of the Roads Act 1993, Council may revoke or terminate a licence by written notice at any time.

Council Staff may approve and execute licences under delegated authority where the application is consistent with this Policy and Council's adopted Fees and Charges.

Any application involving a significant departure from this Policy, the occupation charging framework, or any matter considered to be of strategic significance to Council, will be referred to Council for determination.

5.7.3 Annual Occupation Charge

An annual occupation charge may be payable for private infrastructure located within a public road reserve in accordance with Section 611 of the *Local Government Act 1993*, and the charge will be determined in accordance with Council's adopted Fees and Charges.

Council's Fees and Charges may prescribe:

- a minimum annual occupation charge;
- area-based occupation charges;
- different charge categories for rural, urban, industrial, or strategically significant locations;
- annual indexation; and
- any other fees or charges considered necessary to recover the value of the occupation and administration of the road reserve.

Council may apply an alternative occupation charging methodology where it considers that the nature, scale or configuration of the infrastructure is not appropriately captured by the charging framework outlined in this section.

Council may waive, reduce, or modify occupation charges where the infrastructure is for domestic, agricultural, community, or other non-commercial purposes.

Council may require occupation charges to be reviewed periodically where infrastructure is expanded, modified, relocated, or where the extent of occupation changes.

5.8 Non-Compliance

Council will take action against any person who installs, operates, or maintains private infrastructure within the road reserve without a valid Section 138 permit, licence, or other approval required by Council, or who breaches the conditions of any such approval.

Where a breach is identified, Council will issue a written notice to remedy, specifying the required action and timeframe. Where a breach poses an immediate risk to public safety, Council may take immediate action and recover costs from the responsible party.

Where the responsible party fails to remedy a breach following notice, Council may:

- revoke a Section 138 permit or licence under Section 140 of the Roads Act;
- carry out the required works and recover the costs from the responsible party;
- draw on security held (where applicable); and
- commence legal proceedings.

The installation of private infrastructure in the road reserve without approval does not create any entitlement to a retrospective permit, licence, or any other approval, consent, or property right. Council may require the removal of unauthorised infrastructure notwithstanding any costs incurred by the responsible party.

All material non-compliance matters will be reported to the General Manager.

6. Roles, Responsibilities and Delegations

Role	Responsibility
Group Manager Infrastructure and Operations	• Ensure compliance with this Policy and associated Council requirements. • Exercise delegated authority under this Policy where applicable. • Oversee the assessment, approval, and ongoing management of private infrastructure within road reserves. • Ensure the Policy is reviewed and updated as required.
Co-Ordinator Assets	• Assess applications for private infrastructure in the road reserve. • Calculate and review Section 138 fees and licence charges in accordance with this Policy. • Manage licence agreements and monitor compliance.
Asset Engineer	• Review engineering drawings and technical specifications submitted with applications.

Role	Responsibility
	• Determine security deposit amounts. • Inspect reinstatement works upon licence expiry or termination.
Revenue Accountant	• Administer licence charge invoicing, collection, and annual CPI indexation. • Maintain records of security deposits held by Council.
General Manager	• Receive reports on material non-compliance matters. • Refer matters to Council, NSW Police, or other relevant authorities as appropriate.

7. Dispute Resolution

The General Manager is the interpreter of this Policy and shall be the sole arbiter in respect to the application of this Policy.

8. Related Documents

Legislation and Guidelines

- *Local Government Act 1993* (NSW)
- *Roads Act 1993* (NSW)
- *Environmental Planning and Assessment Act 1979* (NSW)
- *Telecommunications Act 1997* (Cth)
- *Electricity Supply Act 1995* (NSW)
- *Pipelines Act 1967* (NSW)

Council Documents

- Fees and Charges
- Planning and Design Specifications
- Construction Specifications

Other Supporting Documents

- Guide to Codes and Practices for Street Openings - NSW Streets Opening Coordination Council
- Model Agreement for Local Councils and Utility/Service Providers - NSW Streets Opening Coordination Council
- AUS-SPEC

9. Version History

This section identifies authors who reviewed the Policy and the date that it became effective.

V.	Date	Modified by	Amendments/Previous adoption details
1.	XX/06/2026	Environmental Planning Officer	First draft for consultation

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