

Council Policy



Policy Title:	Lease of Road Reserve
Policy Number:	11.12
Focus Area:	CS2 Great Support
Responsibility:	Asset Planning
Meeting Adopted:	28 June 2022 [Resolution 280622/16]

OBJECTIVE

This policy aims to present clear and precise information for leases within a road reserve.

The primary function of a dedicated road reserve is to provide the free right of passageway of the public on foot, in a vehicle, or otherwise over a strip of land set aside and classified as a public road. A lease can only be issued over a public road after consideration that is not being used by the public.

This policy supports the business process for leasing of road reserves which are under Council's authority ensuring adhering to legislative requirements whilst specifying responsibilities (including maintenance, replacement etc) to limit potential liability for Council. This includes the provision for recording structures and identifying lawful occupations within Council's Road Reserves.

POLICY

Council is the Roads Authority for all Council public roads within the Richmond Valley Council Local Government Area. This authority excludes Crown Roads, roads controlled by Transport for NSW (TfNSW) and any roads that have been declared under an alternative responsible authority.

From time to time Council receives requests from adjoining property owners to lease an area of the road reserve adjacent to their property or advice is received from within Council of a possible encroachment onto the road reserve.

Council's ownership of local roads accompanied by Council's legislative obligations necessitates the development of a policy to grant and manage the various occupations of the road reserve. Structures and occupations will be managed by a lease pursuant to Sections 107, 138, 139, 142 and 153-157 of the *Roads Act 1993*.

A lease provides income to Council through rental payments and all costs incurred by Council such as advertising, administration cost and legal fees are to be paid by the applicant.

General Principals

- A lease can only be considered where the applicant is the owner or lessee of land adjoining the public road.
- Recommendations of approval to progress/refusal are at Council's discretion.

- In recommending approval of a lease, consideration will be given to its:
 - Extent and/or type of occupation and lease area occupied,
 - Potential effect on public access including pedestrian and/or vehicular access,
 - Potential to generate a financial risk (e.g. maintenance, replacement etc) or public liability risk for Council,
 - Alienation of public space, and
 - Safety risk.
- Nothing within this policy or referred to in associated documentation confers upon the applicant exclusive rights of title of that part of the road reserve.
- Applications must be made pursuant to Section 138 of the *Roads Act 1993* to seek permission to allow minor encroachments/constructions within Council's road reserve.
- No structures shall be erected on the road reserve unless approved by Council.
- All structures must be of a nature that can be demolished or removed if so required.
- All cost relating to demolition or removal of structures shall be borne by the applicant.
- Applicants must obtain all necessary approvals prior to undertaking any construction within the road reserve. The cost of any such approvals is to be borne by the applicant.
- Council and any other public utility/authority retain the right to undertake work within the consented area. Council is not liable to make good any damage to the consented area.
- Any other direction of Council, pursuant to the *Local Government Act 1993* and the *Roads Act 1993*, or contained within Council's documentation, must be complied with.

Road Reserve Leases

- Applications for lease a road reserve are to be made pursuant to Sections 107, 138, 139, 142 and 153-157 of the *Roads Act 1993*.
- An application fee (including advertising fee) is payable. The amount of such fee is as per the current Revenue Policy.
- Applications must include sufficient details to allow assessment. This must include location sketches, plans, engineering details and certification, details of approvals for the work (Development Application or Construction Certificate) etc.
- Council must give notice prior to granting a lease. Such notice must:
 - be published in a local newspaper,
 - be served on the owner of each parcel of land adjoining the length of public road concerned,
 - identify the public road concerned,
 - state that any person is entitled to make a submission to Council,
 - indicate that submissions are to be in writing and will be accepted within 28 days of publication of the notice. Anonymous submissions will not be considered.
- An assessment regarding the suitability for a proposed lease will be undertaken by Council staff with a review of the principles outlined within this policy and any submissions received during the notice period.
- The General Manager and delegated staff have authority pursuant to Sections 377 and 378 of the *Local Government Act 1993* to negotiate and enter into any form of Lease, Licence, Memorandum of Understanding for the use of land or assets including Council road reserves unless the matter has been requested to be dealt with by Council for a formal determination.

- The applicant will be notified in writing on the final determination of the lease approval/refusal.
- The term of any lease, must not exceed five (5) years other than in accordance with Section 157(1)(b) of the *Roads Act 1993*.
- If granted and in addition to the application fee, a yearly fee will be determined (at market value) for use of the road reserve for the term of the lease which is to be paid annually in advance. Yearly invoices will be raised at the beginning of each term by Council for payment by the applicant.
- If granted and prior to any use, it is the responsibility of the applicant to provide a current Certificate of Currency for Public Liability with a minimum value of \$20 million. Richmond Valley Council is to be listed as an interested party on the Certificate. Upon renewal an updated Certificate is to be forwarded to Council during the term of the lease.
- A lease confers exclusive use to the lessee of the defined area (subject to the *Roads Act 1993*).
- Council reserves the right to terminate the lease, at its absolute discretion, at any stage during the lease period.

EXCLUSIONS

This policy does not apply to:

- Any occupation, encroachments, or constructions on road reserves not under Council's authority including Crown Roads, freeways, state forests, national parks etc.
- Temporary structures approved as part of the Development Application process eg hoardings, site sheds, temporary fencing etc.
- Approvals for use of the road for food or drinking premises including furniture and dining provisions.
- Encroachment/constructions under State or Federal Legislation. Examples include – driveway accesses and associated structures (e.g. retaining walls created to support the driveway) pursuant to the *Roads Act 1993*, post boxes (Australia Post) and power poles/cables (Essential Energy), telecommunications cables/infrastructure pursuant to Commonwealth Telecommunications Legislation (NBN, Optus, Telstra etc), service mains (AGL, sewerage, water etc).

DEFINITIONS

Minor encroachments/constructions	This relates to areas that encroach onto or construction upon a Council road reserve. A minor encroachment/construction may include, but is not limited to: garden bed, minor building overhang, retaining wall, path, steps, rail etc.
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Deed of Agreement

Formal document which provides consent for an encroachment/construction to remain in the road reserve under certain conditions. This consent does not confer exclusive use of the area of encroachment/construction.

Road Reserve Lease

A formal lease up to a maximum five (5) year term between Council and an adjoining owner to exclusively lease an area of road reserve. May include, but not limited to: carports, hardstand areas, landscaped areas, garages, fence or any other temporary structure that can be easily demolished or removed to the satisfaction of Council at the end of the tenure.

REFERENCES

1. Council Procedure No 11.13 – Lease of Road Reserve
2. Fact Sheet – Lease of Road Reserve
3. *Local Government Act 1993*
4. *Roads Act 1993*

REVIEW

This policy will be reviewed by Council at the time of any relevant legislative changes, compliance requirements or at least every four (4) years.

Version Number	Date	Reason / Comments
1	28 June 2022	New policy