

COUNCIL POLICY



Road Reserve and Footpath Obstruction	Document No:	CPL260.5
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Responsible Officer: General Manager City Services	Version No:	02
Authorising Officer:		Chief Executive Officer

1. PURPOSE

- To provide:
 - Guidelines and principles in relation to Council's objective of ensuring that all road reserves (including footpaths) within the City and under Council's control are free of obstructions for the free and safe passage of people and goods.
 - For ongoing inspection programs for the identification of road reserve obstructions.
- To facilitate:
 - Effective risk management through the provision of safe road reserves (including footpaths) conducive to unimpeded pedestrian and vehicular traffic.
 - The maintenance of obstruction free road reserves (including footpaths) and to provide for prompt responses to public complaints regarding footpath obstructions.
- To establish principles for the enforcement of :
 - General Local Law 2005
 - Part 3 Protection of Council Land and Asset
 - Sections 51, 52 Damaging Council land or roads
 - Part 4 Municipal Amenity
 - Sections 60, 61, 62 Vegetation and other objects overhanging vegetation, vegetation on the road itself.
 - Part 5 Roads and Council Land: Obstructions and Behaviours
 - Sections 88, 89, 90 Obstructions on Roads or Council Land

2. Scope

This policy deals with the processes to be applied when Council is made aware of road reserve and footpath obstructions, and articulates the standards for mitigating the incidence of road reserve and footpath obstructions, and for the removal of pre-existing obstructions.

The policy identifies Council's legal responsibilities for the provision of safe road reserves and footpaths, and provides guidance to the public in relation to what may be considered a roadway or footpath obstruction.

The policy applies to all road reserves and footpaths under Council's control within the City boundaries.

3. References

- Local Government Act 1989
- Summary Offences Act 1966
- Road Safety Act 1986 and Subordinate Regulations
- Greater Geelong City Council, General Local Law 2005
- Greater Geelong City Council, Infrastructure Services (Operations) Arboricultural Unit, Technical Manual No. 7 – Private Overhanging Foliage Obstructions, August 2000
- Footpath Trading Policy
- Road Management Act 2004
- Road Management Plan

4. Definitions

- 'Applicant' means the person or organisation which makes application for a permit.
- 'Authorised Council Officer' means a Council Officer authorised under the relevant section of the *Local Government Act*.
- 'Footpath' means a road as defined and any path this is provided for the use of pedestrians only or that is regularly used by pedestrians and not vehicles, or that is a segregated footway or a shared footway generally extending between the boundary of private property and the edge of kerb and channel on a road reserve.
- 'Irrigation system' means any artificial water supply system including sprinklers, either above ground or subterranean.
- 'Nature strip' means that portion of a footpath which is generally grassed and which may contain street trees.
- 'Obstruction' means for the purpose of this policy any object, plant or thing which stops or inhibits free and safe passage on a road reserve or footpath.
- 'Permit' means a permit issued by Council under a Local Law.
- 'Road' means as prescribed in the *Local Government Act 1989*:
'road' includes –
 - (a) a street; and
 - (b) a right of way; and
 - (c) any land reserved or proclaimed as a street or road (road reserve) under the **Crown Land (Reserves) Act 1978 or the Land Act 1958**; and
 - (d) a passage; and
 - (e) a cul de sac; and
 - (f) a by-pass; and
 - (g) a bridge or ford; and
 - (h) a footpath, bicycle path or nature strip; and

- (i) any culvert or curbing or other land or works forming part of the road;
- 'Service Authority' means any company or public body responsible for the installation of public services, eg, telecommunications, gas, electricity, water or sewerage.
- 'Street' means a road as defined.

5. Policy

5.1. Introduction

- Under Section 205 of the *Local Government Act* 1989, Council has as a legal responsibility for the care and management of roads including footpaths and road reserves. Specifically, under Section 205(2)(a) of the Act, Council – 'must ensure that if the road is required for public traffic, it is kept open for public use.'
- As a consequence Council and/or other persons responsible may be found legally liable for encroachments made into road reserves that interfere with public access. Under Section 10 of the Act, Council has the power to (a) move anything that encroaches or obstructs the free use of a road, or that reduces the breadth, or confines the limits of a road; (b) require any person responsible for or in control of the thing to move it.
- Council acknowledges that service authorities operate under specific Federal and State legislation and that on occasions service authorities may, in the course of undertaking required works (eg, locating underground services), obstruct parts of road reserves and footpaths. In such circumstances the provisions of this policy will not apply to service authorities.
- Where an infringement of the above is deemed by an Authorised Officer to have occurred the Authorised Officer may serve a Notice to Comply on the owner or occupier of the land abutting the area of the road reserve in which the infringement has occurred.
- Additionally under the *Summary Offences Act* 1966 and the *Road Safety (Traffic) Regulations* 1988, it is an offence for any person to obstruct a footpath, road or highway.

5.2. It is the policy of Council that

- Where it becomes aware of an alleged breach of the principles above that it will investigate the matter, and where it is deemed that an unauthorised road reserve or footpath obstruction exists it will take steps to ensure that the obstruction is removed.
- Where a person is served with a Notice to Comply requesting removal of a road reserve or footpath obstruction and fails to remove the obstruction within the required timeframe that Council will then arrange for removal of the obstruction at the offending person's expense.
- Cyclical inspections of all road reserves (including footpaths) throughout the City will be undertaken and that any unauthorised obstructions will be documented and investigated by an Authorised Officer.

- In accordance with the provisions of Technical Manual No. 7 of the Infrastructure Services Arboricultural Unit dealing with 'Private Overhanging Foliage Obstructions' that it will enforce the following:
 - An owner or occupier of premises abutting a road must:
 - (a) not allow any flora on the premises to grow in such a manner that it interferes with a pedestrian or driver using the road, including a footpath, obtaining a clear view of another pedestrian or vehicle on the road; or
 - (b) not allow any part of any flora on the premises to overhang a road, including a footpath:
 - i. at height of less than 3.6 meters above laneways and 2.4 meters above footpaths/nature strips.
 - ii. so as to be likely to cause injury, inconvenience or annoyance to any person using the road.

5.3. Further to the above principles:

- Any person deemed responsible for a road reserve or footpath obstruction shall be granted adequate time (normally 28 days) to remove the said obstruction to the satisfaction of Council.
- A person may apply for a permit to place an object or thing on a road reserve or footpath where the object or thing will not cause an obstruction. However, it is the policy of Council that irrigation systems will not be allowed under any circumstances.
- The permit applicant must provide an indemnity to Council with General Local Law 2005 indemnifying the Council in relation to any actions, claims, suits or demands brought by any person relating to any loss, damage or injury resulting from the placement of any street furniture.
- The permit holder must agree to take out and keep current during the period of the permit authority a liability insurance policy in a form approved by Council in the joint names of the Council and the permit holder with a minimum coverage of \$5 million.
- After inspection by an authorised Council Officer, where Council is not satisfied with the condition, placement or type of object it will serve a 'Notice to Comply' on the permit holder demanding adherence to the permit conditions.
- In relation to defining footpaths and nature strips, the standard of distinguishing nature strips within the City of Greater Geelong is a grassed area with street trees leaving provision for the construction of a 1.5 metre wide footpath for pedestrian access generally abutting the private property line.
- In special circumstances Council may issue planning permits with specific conditions which allow land owners or occupiers to place or construct objects, plants or things on road reserves and footpaths. In these circumstances the conditions of the planning permit will override any conflicting aspects of this policy.
- Where service authorities or contractors are required to undertake works which require the removal or disruption of objects, plants or things on road reserves and footpaths, which have been allowed by Council under permit conditions, then the service authority or contractor will only be required to

reinstate the road reserve or footpath to normal condition, *ie*, not the augmented permit condition.

5.4. Policy Review

- It is the policy of Council that this policy be reviewed every two years.

6. QUALITY RECORDS

Quality Records shall be retained for at least the period shown below.

Record	Retention/Disposal Responsibility	Retention Period	Location
Inspection Reports - Street Files	Corporate Records	Permanent	Corporate Records
Notice to Comply	Local Laws	2 years	Local Laws

7. ATTACHMENTS

- Nil