



10. PROPERTY MANAGEMENT

Policy 10.XX

Unformed and Unmaintained Roads Policy

Version 1

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10.XX UNFORMED AND UNMAINTAINED ROADS POLICY

OBJECTIVE:

The objectives of this Policy are to:

1. Establish clear guidelines for the management and administration of unformed and unmaintained roads within the Lithgow City Council local government area; and
2. Assist Council in achieving the objectives of the Lithgow Community Strategic Plan relating to sustainable infrastructure, responsible asset management, and equitable access.
3. To make a determination on those roads that should be incorporated into the maintained network.
4. To define guidelines that can be applied to all requests for maintenance of roads currently not on the maintained road register.

LEGISLATIVE REQUIREMENTS:

This Policy is consistent with, and informed by, the following legislation:

- Roads Act 1993 (NSW)
- Local Government Act 1993 (NSW)
- Crown Lands Management Act 2016 (NSW)

RELATED POLICIES, PLANS AND DOCUMENTS:

This Policy should be read in conjunction with:

- Lithgow City Council Roads Asset Management Plan
- Lithgow City Council Infrastructure Delivery Program
- Lithgow City Council Land Acquisition and Disposal Policy
- Council's Development Control Plan (DCP)
- Council's Application for Works within a Road Reserve requirements
- Lithgow City Council Policy 10.11: Crown and Private Roads Maintenance Responsibility

ALIGNMENT WITH THE LITHGOW COMMUNITY STRATEGIC PLAN:

This Policy aligns with the Lithgow Community Strategic Plan by:

- Supporting Sustainable Infrastructure through responsible asset management and prioritisation of Council-maintained roads.
- Supporting Liveable Communities by clearly defining access responsibilities and managing expectations for rural and fringe-area properties.
- Supporting Responsible Governance by providing transparent, consistent and equitable decision-making frameworks for road maintenance, upgrades, and transfers.

SCOPE:

This Policy applies throughout the Lithgow City Council local government area.

This Policy applies to:

1. All roads identified in Council's Asset Register as unmaintained;
2. All roads identified in Council's Asset Register as unformed.
3. All roads which have been newly transferred to Lithgow Council by another roads authority or government department.

This Policy applies to all unformed road reserves regardless of whether they are named or unnamed.

DEFINITIONS:

Unmaintained Road

A road reserve that may be formed or unformed but is not constructed to Council standards and contains no road assets maintained by Council, or is privately owned. A road is identified as unmaintained where it is not listed as a maintained road in Council's Ropads Asset Register.

Unformed Road

A road reserve that exists in the cadastre but:

1. Has not been constructed or graded to an appropriate width with suitable crossfall, drainage, table drains or other drainage infrastructure. A flat dozer-bladed track remains classified as unformed; or
2. Is a "paper road" where no physical works have occurred and the reserve remains largely in its natural state.

INTRODUCTION

In addition to the sealed and unsealed road network maintained by Lithgow City Council, there are numerous public and Crown road reserves within the local government area that Council is not the identified controlling roads authority and therefore does not maintain these roads.

These roads are legally available for public use but are classified as unmaintained or unformed roads. Roads maintained by Council are those listed in Council's Roads Asset Register. Any road or accessway not listed in this Plan, but existing in the cadastre as a Council or Crown road, is legally accessible; however, the responsibility for construction and maintenance rests with the landowners who rely on the road for access.

Council does not undertake any works, or issue any approvals related to legally identified roads that aren't controlled by Council as the roads authority and therefore not in the asset register.

Council does not have the financial capacity to construct and maintain access along every road reserve within the local government area in addition to its established road network.

Council will only maintain roads that:

- Have been constructed by Council; or
- Have been constructed by another party to Council standards and formally handed over to Council.

Where landowners wish to improve access along an unformed or unmaintained road, formal, written Council approval is required prior to any works being undertaken. Where the road is a Crown road, approval is also required from the relevant NSW Crown Lands authority.

Formation of a road to Council standards does not imply that Council will accept responsibility for ongoing maintenance. Requests for new maintained roads will be assessed on a case-by-case basis against this Policy.

An easement with right of carriageway is generally constructed to a lesser standard and will not be accepted or maintained by Council.

Council acknowledges that unformed road reserves can, in some circumstances, be a constraint or liability to adjoining landowners. Council may consider the closure or sale of unformed road reserves in accordance with its Land Acquisition and Disposal Policy.

BACKGROUND:

Council currently looks after approximately (1,375) km of unsealed roads at an annual cost in excess of \$(2.6) million. Over (160) km of roads are presently identified as unmaintained, ie those that do not receive regular grading or any other works thereon. The annual cost to perform a maintenance grade on each road bi-annually would be approximately \$(62,000) per annum (assuming appropriate formation, and additional cost of some \$(1.3) million would be required to construct a single lane gravel road).

The issue of roads that should be maintained by Council is an emotive one, where in certain cases an expectation exists for Council to maintain every rural road to each ratepayer's property. This policy identifies roads or road segments not presently maintained by Council (Refer Attachment). This list of roads is not definitive as there are many "paper" roads within the region in which there may be access tracks. As Council is made aware of any named tracks, they will be added to the list. Several roads do not have their length identified, as this information has not been sourced at this time.

With existing financial constraints it is unlikely that sufficient funding is available to adequately maintain Council's existing unsealed road network. To add any additional roads at this time would place an undue burden on the available funding.

The lack of maintained road to every rural property could have some social impact due to the fact that access may not always be available for visitors to those

properties. It also places an increased cost on the landowners to maintain their own access.

The length of unformed roads in the area has been estimated to be over (3,000 km). At an assumed average rate for construction in excess of \$(20,000) per km for good open surface road (single lane in virgin country) it may cost over \$(60) million to construct all of the presently unformed roads. This does not take into account that many of the unformed roads have never been constructed because they are over sand-hills, rocky ridges or swamps.

Where a Development Application (DA) is received by Council and this DA relies on access from a Crown road, it is now common practice for the relevant government department to transfer this road to Council ownership prior to providing governmental approval for the development to occur. Unfortunately, this adds to Council's financial strain.

All Councils are being urged to consider very carefully the creation of new assets as figures indicate that it may already be beyond the resources of governments, including local government to maintain existing assets. While Council will receive requests for the creation of new roads it will give such requests consideration against the above background.

The unformed but surveyed roads are on occasions a hindrance and a liability to property owners as they may give access to parts of properties that cannot be managed for public access, and this could cause financial loss to the property owners and be a risk to Council. There are occasions when in the public interest, Council may give consideration to selling road reserves to the adjoining landowner(s) – refer Permanent Road Closures Policy.

POLICY:

Council Road Reserves

Council will not maintain every public road reserve within the Local Government Area, whether formed tracks or unformed road reserves. Council will only provide a maintained road network within the limit of funds available as determined in the Roads Asset Management Plan, as amended from time to time.

1. Roads will only be added to Council's maintained road network, and thereby given the classification of maintained and/or formed within its Asset Register, following formal consideration by Council.
2. Consideration will include:
 - a) The cost to upgrade the road to Council's minimum standard as defined in the Roads Asset Management Plan;
 - b) Ongoing maintenance and lifecycle costs; and
 - c) The impact on Council's overall roads program and budget.
3. As a general principle, road reserves servicing fewer than five (5) permanent residences will not be considered for classification as a formed and/or maintained road within Council's Asset Register.

Note: Council acknowledges that some historically maintained roads may not meet this criterion.

4. Road extensions beyond an existing property boundary will not be considered for maintenance. Council's priority is provision of access to individual properties. Internal access improvements remain the responsibility of landowners.
5. Council may undertake maintenance on unmaintained roads under a private works arrangement, subject to:
 - a) Availability of plant and staff;
 - b) Location of works relative to programmed operations; and
 - c) Full cost recovery from the benefiting landowners.
6. Private individuals or contractors may undertake works within an unmaintained public road reserve only if:
 - a) An approved Application for Works within the Road Reserve has been issued by Council;
 - b) The application details the scope of works, experience of the contractor, and plant to be used;
 - c) Appropriate traffic control measures are in place; and
 - d) The applicant holds Public Liability Insurance with a minimum cover of \$20 million, suitably noting Council.
7. Approval of a dwelling on land accessed via an unmaintained or unformed road does not create an obligation for Council to construct, upgrade, or maintain that road (please see Part 18 below for further information).

Crown Road Reserves

8. Crown road reserves are administered under the Crown Lands Management Act 2016.
9. Council does not maintain or administer Crown road reserves unless formally transferred.
10. Where a Crown road reserve contains a road constructed and maintained by Council, Council will seek transfer of the reserve to Council ownership.
11. Where a Crown road provides the only legal and physical access to land, Council will not support closure of that road.
12. Where Crown roads are transferred to Council as unformed or unmaintained roads, maintenance responsibility remains with the benefiting landowners.
13. Where Crown roads are transferred to Council as formed and maintained roads, maintenance responsibility will be accepted by Council so long as those roads serve five (5) or more residences.
14. All costs associated with Crown road closures or transfers, including survey, legal, gazettal, and agency fees, are to be borne by the applicant. As a general rule, Council will not request the transfer of a Crown road to Council on behalf of a landowner.
15. Prior to accepting transfer, Council must be satisfied that:
 - a) There are no fencing or other unapproved asset encroachments;
 - b) There are no enclosure permits or unresolved tenure anomalies; and
 - c) The road alignment is correct.
16. Council is not responsible for any costs associated with physical construction of a former Crown road following transfer.

17. Any works on a former Crown road must not commence until:
 - a) The road is formally transferred and gazetted; and
 - b) Council approval for works within the road reserve has been issued.
18. To ensure Council and the community does not subsidise the cost of development, Council will require the upgrade of a current or former Crown road to a Council approved, formed road standard for any DA that relies on a current or former Crown road for access, and that DA has been deemed to generate additional traffic on the subject road. This upgrade must occur from the intersection of that current or former Crown road with the Council road network, to furthest property boundary subject to the relevant DA.
19. Conversely, to best balance perverse outcomes arising from Part 18 above, for any development application that relies on a current or former Crown road for access, if that development does not generate additional traffic, upon approval, such a DA will include a condition of consent noting that the subject Crown road will remain unformed and unmaintained by Council.
20. Where a Crown road provides access to ten (10) or more lots and is upgraded to Council standards by a developer, Council may consider accepting ongoing maintenance following formal transfer.

Private Roads

Where a request is made for Council to accept a privately owned road as a public road:

21. A written application must be submitted, signed by all parties with an interest in the road, confirming willingness to dedicate the road as public.
22. A plan prepared by a registered surveyor must be provided, showing:
 - a) Road alignment;
 - b) Property boundaries;
 - c) Connections to existing roads.
23. Council will not accept any private road unless it meets:
 - d) Council's minimum engineering standards; and
 - e) Requirements of the Roads Asset Management Plan.
24. Council may impose additional requirements prior to acceptance.
25. If Council agrees to accept the road, the applicant must lodge and complete all subdivision and dedication processes.
26. The road will not be considered a Council maintained road until all requirements are fully satisfied and formally approved.

POLICY REVIEW

This Policy will be reviewed every four (4) years, or earlier if required due to legislative or operational changes.

RELEVANT ROADS ACT (1993) EXCERPTS

6 Right of access to public road by owners of adjoining land

- (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.
- (2) The right conferred by this section does not derogate from any right of access that is conferred by the common law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law.

86 Functions of council in respect of private roads

- (1) A council may direct the owner of a private road (other than a classified road) to carry out such work as, in the opinion of the council, is necessary to prevent the road from becoming unsafe or unsightly or, if of the opinion that it is appropriate that the work should be carried out by the council at its own expense, may carry out any such work itself.
- (2) If there is more than one owner of a private road, the respective owners are liable to pay those expenses in such proportions as the council decides.
- (3) In deciding the proportion of expenses to be paid by the respective owners, the council must have regard to:
 - (a) the benefit that any particular land will derive from the work, and
 - (b) the amount and value of any work carried out in respect of the road by the respective owners or occupiers of the land.

138 Works and structures

- (1) A person must not:
 - (a) erect a structure or carry out a work in, on or over a public road, or
 - (b) dig up or disturb the surface of a public road, or
 - (c) remove or interfere with a structure, work or tree on a public road, or
 - (d) pump water into a public road from any land adjoining the road, or
 - (e) connect a road (whether public or private) to a classified road,otherwise than with the consent of the appropriate roads authority.
Maximum penalty: 10 penalty units.
- (2) A consent may not be given with respect to a classified road except with the concurrence of RMS.
- (3) If the applicant is a public authority, the roads authority and, in the case of a classified road, RMS must consult with the applicant before deciding whether or not to grant consent or concurrence.
- (4) This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.
- (5) This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the *Pipelines Act 1967* or under any other provision of an Act that expressly excludes the operation of this section.



139 Nature of consent

- (1) A consent under this Division:
 - (a) may be granted on the roads authority's initiative or on the application of any person, and
 - (b) may be granted generally or for a particular case, and
 - (c) may relate to a specific structure, work or tree or to structures, works or trees of a specified class, and
 - (c1) in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979*, is subject to Division 5 of Part 4 of that Act, and
 - (d) may be granted on such conditions as the appropriate roads authority thinks fit.
- (2) In particular, a consent under this Division with respect to the construction of a utility service in, on or over a public road may require the service to be located:
 - (a) in such position as may be indicated in that regard in a plan of subdivision or other plan registered in the office of the Registrar-General with respect to the road, or
 - (b) in such other position as the roads authority may direct.
- (3) In particular, a consent under this Division with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes.

142 Maintenance of works and structures

- (1) A person who has a right to the control, use or benefit of a structure or work in, on or over a public road:
 - (a) must maintain the structure or work in a satisfactory state of repair, and
 - (b) in the case of a structure (such as a grating or inspection cover) located on the surface of the road, must ensure that the structure is kept flush with the surrounding road surface and that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,and the person is, by this section, empowered to do so accordingly.
Maximum penalty: 30 penalty units.
- (2) Subsection (1) applies to all structures and works in, on or over a public road, including structures and works for which there is no consent in force under this Division.
- (3) Subsection (1) does not apply to a person whose right to the control, use or benefit of a structure or work consists merely of a right of passage that the person has as a member of the public or a right of access that the person has as the owner of adjoining land.
- (4) If:
 - (a) a roads authority has granted a consent under this Division to the doing of anything, and
 - (b) that thing has been or is being done otherwise than in accordance with the consent,the roads authority may direct the holder of the consent to take specified action to remedy any damage arising from the doing of that thing otherwise than in accordance with the consent.

146 Nature of ownership of public roads

- (1) Except as otherwise provided by this Act, the dedication of land as a public road:
 - (a) does not impose any liability on the owner of the road that the owner would not have if the owner were merely a person having the care, control and management of the road, and
 - (b) does not affect the rights or liabilities of any person under any easement or under any Act or law, and
 - (c) does not affect any rights of any person with respect to minerals below the surface of the road, and
 - (d) does not constitute the owner of the road as an occupier of the land, and
 - (e) does not authorise the owner of the road to dispose of any interest (other than an easement or covenant) in the land, and
 - (f) does not prevent any lands that were previously considered to be adjoining lands for the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991* from continuing to be so considered.
- (2) This section does not restrict the power of a roads authority to regulate the digging up of public roads pursuant to the provisions of any other Act.

DRAFT

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