

Use of Council Land

Corangamite Shire
November 2021



CORANGAMITE
SHIRE

Council Policy



CORANGAMITE
SHIRE

Use of Council Land

Introduction

Corangamite Shire Council is committed to creating a safe, liveable community that considers the socially disadvantaged. This will be achieved by implementing a fair, predictable and consistent approach to the use of Council land.

The unauthorised use of Council land can pose a significant risk to Council and the community. Unauthorised uses may:

- Compromise the integrity and appearance of the land;
- Alienate land from public access and use;
- Impede management of the land including fire management;
- Create a risk to public safety;
- Reduce vision at intersections;
- Cause social inequity; and
- Create legal liability issues.

The use of Council land (either authorised or unauthorised) tends to occur in locations where properties in private ownership adjoin Council land, are the subject of low maintenance regimes and/or appear to be minimally used such as, road reserves and footpaths.

Unauthorised use of Council land can also be a significant problem particularly where there are rear and side laneways, crossovers to private property and in localities where trading activities extend into the existing pedestrian area.

Some common forms of unauthorised uses include:

- Closing roads;
- Festivals, processions, community markets or trading activity;
- Unregistered vehicle parking and materials storage, including bulk rubbish containers and fodder;
- Fencing or otherwise enclosing land and road reserves as part of an adjoining property;
- Construction of courts, pools, sheds and extensions to dwellings or commercial properties that traverse the property boundary onto Council land;
- Planting of vegetation, grazing and cultivation of crops;
- Signs (including real-estate, a-frame and tear drop), sale of goods, footpath trading, street stalls and outdoor dining.

Unauthorised use of Council land can vary in significance from major incursions through annexation of land or erection of structures to minor cases such as the erection of a small sign on a road reserve.

While some unauthorised uses are innocent mistakes many are intentional with the purpose of gaining additional land or access rights.

Purpose

To provide a clear and transparent policy direction for the many and varied forms of use of Council land, in order to actively reduce the number of occurrences and risks associated with unauthorised uses.

Scope

This policy applies to all land and associated assets owned by or under the care and control of Council that occur on road reserves and/or in public areas. The policy establishes that Council is actively seeking to reduce the incidents of and to minimise the risk to Council arising from unauthorised uses of Council land.

This policy excludes all Council owned and occupied land and buildings and where Council acts as Committee of Management on Crown Land (refer to Council's Property Leasing Policy). Council will retain management responsibility for land owned and/or occupied by Council where third-party agreements have not been established.

Council has a responsibility under the *Local Government Act 2020 (as amended)* to ensure that community land under its ownership or care, control and management is set aside and managed appropriately. In addition to providing permits for some activities, Council may also install directional signage at specific sites to limit certain activities e.g. flying drones.

Council also has responsibility to ensure that public roads are kept clear and safe for use by the public.

Definitions

Camping: a person will be deemed to be camping if sleeping overnight within a parked vehicle or any tent, annexure, awning or other facility erected or attached to a parked vehicle on Council land.

References

Local Government Act 2020

Corangamite Shire Local Laws No 1 and No 2 2015

Policy Detail

No person may destroy, damage, or interfere with Council land and/or assets without the written consent of Council.

Council may provide written consent to:

- Alter a water course, ditch, creek, gutter, drain, tunnel, bridge, levee, culvert, plants, trees or fence.
- Remove something.
- Place something on Council land (including fences, gates, hay bales, plants, tree limbs, bulk rubbish containers etc.).
- Allow trees or plants on land to cause damage to or interference with Council land.
- Use a recreation vehicle on Council land, if that land has been set aside for the purpose

by Council. Consent will not be issued for this activity if the land has not been specifically set aside for that purpose.

- Camp on Council land, unless such Council land has been specifically set aside for camping purposes.
- Conduct a circus, carnival or other similar event on any Council owned or controlled land. Consent requirements do not apply where the Council's planning scheme allows a circus or other similar event to be held subject to a planning permit being obtained.
- Erect a temporary electric fence on a road / road reserve for the purposes of removing excess grass which may constitute a fire hazard.
- Erect any fence or gate on a road / road reserve.
- Use a rural roadside for a purpose other than grazing.
- Erect signage of any type.
- Provide outdoor eating.
- Display goods for sale or undertake a trading activity.
- Hold a street festival, procession, community market.
- Close any part of a road or area normally open to the public and
- Any other activity or use which is considered to be suitable for the area and in accordance with Council Policy, Local Laws and/or community wellbeing.

If unauthorised use of Council land is identified the person/s currently making use of the land will be required to immediately apply for Council consent, unless the use of Council land is on a rural roadside, requires long term tenure, for a purpose other than grazing and a lease would better suit the needs of the Council.

Permits

No person may destroy, damage or interfere with Council land and/or assets without the written consent of Council. Council consent will typically be in the form of a local law permit. If the use is determined to be unsuitable by an authorised officer a permit will not be issued or if the unsuitable use is already occurring Council will immediately provide direction for the use to stop.

Applications for permits are required to be in writing on the prescribed form contained within *Councils Local Law 2015* and a permit fee will apply.

The consent/local law permit period operates from 1 January to 31 December unless cancelled by the permit holder or revoked by Council. All permits must be renewed annually and there will be no refund of permit fees if the permit is cancelled.

The permit holder will be responsible for providing evidence that he/she is covered by adequate public liability insurance for the use and associated issues that may arise with that use.

A person may be required at any time to stop the permitted use and/or remove all associated items if requested by an authorised officer. If this request is related to road maintenance or construction works, consent may again be provided when the works are completed.

Although generally discouraged a permit may be issued to allow the use of Council land outside a premises that is not occupied by the applicant. This type of application must be accompanied by written permission from the owner of that land and the proprietor if the property is a business. In this instance the applicant's public liability insurance must be extended to include this area.

Permits are not transferred when property ownership or management changes. A new permit must be applied for by the new owner or manager.

Council may revoke a permit should the permit holder fail to comply with any or all of the conditions contained in this form.

Permit holders will be responsible for any damage caused to the area and for reimbursing Council if reinstatement works are required to Council assets as a result of the permitted use.

Conditions of use will apply as determined by an authorised officer and will then be included as part of the consent/permit that is issued. It is policy that the authorised officer will at a minimum apply the relevant Specific Conditions of Use below and ensure that safety of the community is not impacted from the use.

Road Licencing/Leasing

If a use requires long term tenure and is for a purpose other than grazing and a licence or lease would better suit the needs of the Council, the person/s currently making use of land will be required do the following:

1. Apply to take out a licence or lease which is issued by Council to permit the activity for a term of not more than 5 years.
2. Pay a licence/lease fee annually as set by Council.
3. Activities to be carried out in accordance with a Land Use Plan approved by Council.
4. Demonstrate that the following criteria are considered and will be applied to the land where appropriate:
 - amenity of the area
 - visual impact
 - road user safety
 - public liability
 - area re-establishment at licence expiration.

No new use of road reserves for purposes other than grazing will be permitted without Council consent prior to commencement.

Specific Conditions of Use

Grazing and Fences on Council Land

Issuing a grazing permit for roadsides does not relieve the occupier of their statutory obligation to maintain at all times a stock-proof fence on the correct boundary of the property and to prevent stock from wandering at large on the road outside the permit area or grazing of stock outside the permitted grazing times. The following conditional also apply:

- The permit is granted for the purpose of fire hazard reduction only.
- Permit areas are to be fenced by a temporary electric fence, with a minimum of 2 wires and must be constructed to allow easy removal from the roadside when necessary.
- The temporary electric fence shall be kept stock-proof and shall be placed no closer than 5 metres from the centre of the carriageway (or as directed by an Authorised Officer).

- The fence is to be removed following a request to remove the fence from an Authorised Officer or Works Team Leader.
- The permit holder must ensure that the roadside specified in the permit be grazed to a height of 150mm or less to reduce the fire hazard during the fire restriction period.
- The area of road fenced in, as well as the strip between the temporary electric fence and the carriageways shall be kept free of noxious weeds, and the whole area must be maintained in a clean and tidy condition. No damage to native vegetation or to the roadside itself is permitted.
- Only dairy cattle, beef cattle, horses and sheep shall be permitted in the area enclosed by the temporary electric fence and such stock shall be removed from that area between sunset and sunrise.
- No bulls or pigs shall be permitted in the enclosed area at any time.
- Fences may be electrified between sunrise and sunset only. The permit holder must ensure that the fence is electrified and stock proof whenever stock are present on the area enclosed by the temporary electric fence and not electrified when no cattle are present.
- The applicant shall be responsible for any damage caused by the use to telecommunication or power transmission cables, whether above or below ground and if in doubt about the existence and position of such cables, should consult these authorities.
- The road shall not be over-grazed nor trampled into mud. All water channels and culverts enclosed by the temporary electric fence shall be kept, by the occupier, in good working order at all times.
- No silage, hay or other similar manner of feeding or storage shall be permitted on the road frontage.
- No fertiliser applications or cultivation is permitted.
- Any electric fence or portion thereof installed along a public road or highway, shall be identified by signs which shall be in the form of metal or plastic plates measuring not less than 150mm x 80mm having a bright yellow or red background on both sides and with the inscription "Electric Fence" on both sides using a block lettering not less than 20mm high, such signs to be placed at intervals of not less than one sign per 100 metres of fence.
- Grazing will only be permitted on roadsides from 1 September to 30 April. Special circumstances will be considered and may be permitted in writing by the Manager Environment and Emergency.

Urban Areas

The permit holder must ensure a Pedestrian Area along the footpath remains unobstructed for pedestrian movement which is at least 1.8 metres wide and 2.4 metres high. The Pedestrian Area is to ensure a continuous, accessible path of travel. No items of furniture including signs, planters, umbrellas and tables and chairs are permitted in this area.

In addition to maintaining the pedestrian area:

- Tables and chairs and any items associated with footpath dining must at all times be confined to the area adjacent to the kerb line unless approved by Council.
- All chairs should be positioned in a way that will prevent them from being backed into the pedestrian area.
- Permit holders are responsible for any litter generated by patrons of their footpath dining areas.

- Portable advertising signs (A- boards) should be located adjacent to the kerbside and be no greater than 900mm high by 600mm wide.
- Signs and goods for display must only be displayed during the businesses normal hours of operation.
- Signs and goods for display must not be affixed to any footpath, building, street furniture, pole or other structure.
- Inflatable signs, portable electric signs, illuminated and flashing signs are prohibited from the footpath.
- Goods for display should be kept to a minimum and preferably displayed against the kerbside.
- When goods are displayed against the building line, they should be kept as close as possible to the building, to ensure a clear pedestrian area.

Street Party/Festival, Procession, Community Markets or Road Closure

To assist with determining the impact on the community and amenity impact, applications must be on the prescribed form and at a minimum include:

- The name, address and phone number of a nominated person through whom arrangements can be made.
- The group of people or the organisation on whose behalf the application is being made.
- The name (and sections) of streets which are sought to be closed including maps.
- The date and times for the road closure.
- VicRoads consent if the road closure requires the closure of a VicRoads controlled highway.
- A copy of the current insurance policy that specifically covers the proposed activity.
- Any other matter relevant to the application.

In determining whether to grant a permit or written consent for a street party/festival, procession, community market or road closure, Council must take into account:

- Whether land or road can be closed to vehicular or pedestrian traffic, or partly closed with safe and effective separation of vehicular traffic and use, patrons and equipment;
- Whether the agreement of Victoria Police, VicRoads and as required Ambulance Victoria has been obtained and their requirements met, including an appropriate traffic management plan;
- Whether all owners or occupiers of properties with any vehicular access via the section of road to be closed have been advised by letter and given seven (7) days to comment or object; and
- Any other matter relevant to the circumstances of the application.

Exemptions

Council may maintain nature strips that are considered a fire risk within the township area to reduce fire hazards, with one treatment per fire season. No permit will be required by adjoining landowners for the management of private nature strips within townships on a more frequent basis than is provided by Council. Areas that are determined to be of community benefit may be maintained more frequently at the discretion of Council.

Council may exempt any person or class of person/s or an authority from the need for a permit or the payment of a permit fee.

Review Date

November 2025

Human Rights

The policy gives regard to relevant legislation, principles of natural justice and procedural fairness, community values and Council's resource capacity.

It is considered that this policy does not adversely impact community members or employees of different genders and has been developed in accordance with the Gender Equality Act 2020.

It is considered that this policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act (2006)*.



.....
Andrew Mason
Chief Executive Officer
Corangamite Shire

Date: 29/11/2021

Review Date

23 November 2025