

ROAD RESERVE LEASING POLICY

August 2023

PREPARED BY:
PROPERTY UNIT



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SUTHERLANDSHIRE

1. PURPOSE

The purpose of this Policy is to provide principles to guide decision making in granting and managing exclusive occupations of the Road Reserve. This Policy is intended as a guide for requests Council receive from adjoining property owners to lease an area of the road reserve adjacent to their property or when an encroachment onto the road reserve occurs.

2. APPLICATION

The Policy applies to public space within the Sutherland Shire Council Local Government Area that is Road. It does not apply to crown roads, roads controlled by Transport for NSW, roads identified for future widening or extension, footpaths, cycleways or other road infrastructure.

3. PRINCIPLES

3.1 Application of Principles

No one principle should be applied to the detriment of another. Principles must be collectively considered and applied to the extent that is reasonable and practicable in the circumstances.

3.2 Safe pedestrian and road user access

Ensure the footway and road reserve are accessible to pedestrians and other users of the road.

3.3 Streetscape environment

Provide a safe and appropriate streetscape environment by effectively controlling approved structures and encroachments.

3.4 Leases granted must not expose Council to unnecessary risk

Occupation of land must not expose Council to unnecessary risk. This includes financial risk (e.g. maintenance and replacement) and public liability risk.

3.5 Leases granted must not impede public amenity or safety

Permitted road reserve leases must avoid nuisance, endangerment or inconvenience so that residents can continue to enjoy the amenity of their neighbourhood.

4. RESPONSIBILITIES

4.1 Responsible Officer

The Manager Property is responsible for this Policy.

4.2 Chief Executive Officer

Council has delegated the Chief Executive Officer the authority to exercise the responsibilities detailed in this Policy.

4.3 Directors

Directors are responsible for ensuring their directorate adheres to the requirements of this Policy and providing guidance in respect to safe and legal leasing of road reserves within their directorate and the organisation.

4.4 Employees

Employees must adhere to the requirements of this Policy and operate within its authorities.

5. POLICY COMPLIANCE

The Manager Property will monitor, review and report on the effectiveness of the Policy.

6. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the NSW State Records Act 1998 and Privacy and Personal Information Protection Act 1998 through its Access to Information Policy and Privacy Management Plan.

7. BREACHES OF POLICY

Breaches of this Policy will be dealt with in accordance with normal disciplinary procedures and will be advised to the Chief Executive Officer and / or Director Corporate Services via the Manager Property where appropriate.

8. RELATED DOCUMENTS

- Public Property Encroachment Policy
- Public Domain Design Manual
- Compliance and Enforcement Policy

9. RELEVANT LEGISLATION AND REGULATIONS

- *Local Government Act 1993 (NSW)*
- *State Records Act 1998 (NSW)*
- *Roads Act 1993*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Government Information (Public Access) Act 2009 (NSW)*
- *Environmental Planning and Assessment Act 1979*
- Council's Public Encroachment Policy 2022
- Council's Asset Management Policy 2020
- Transport for NSW Movement and Place Framework

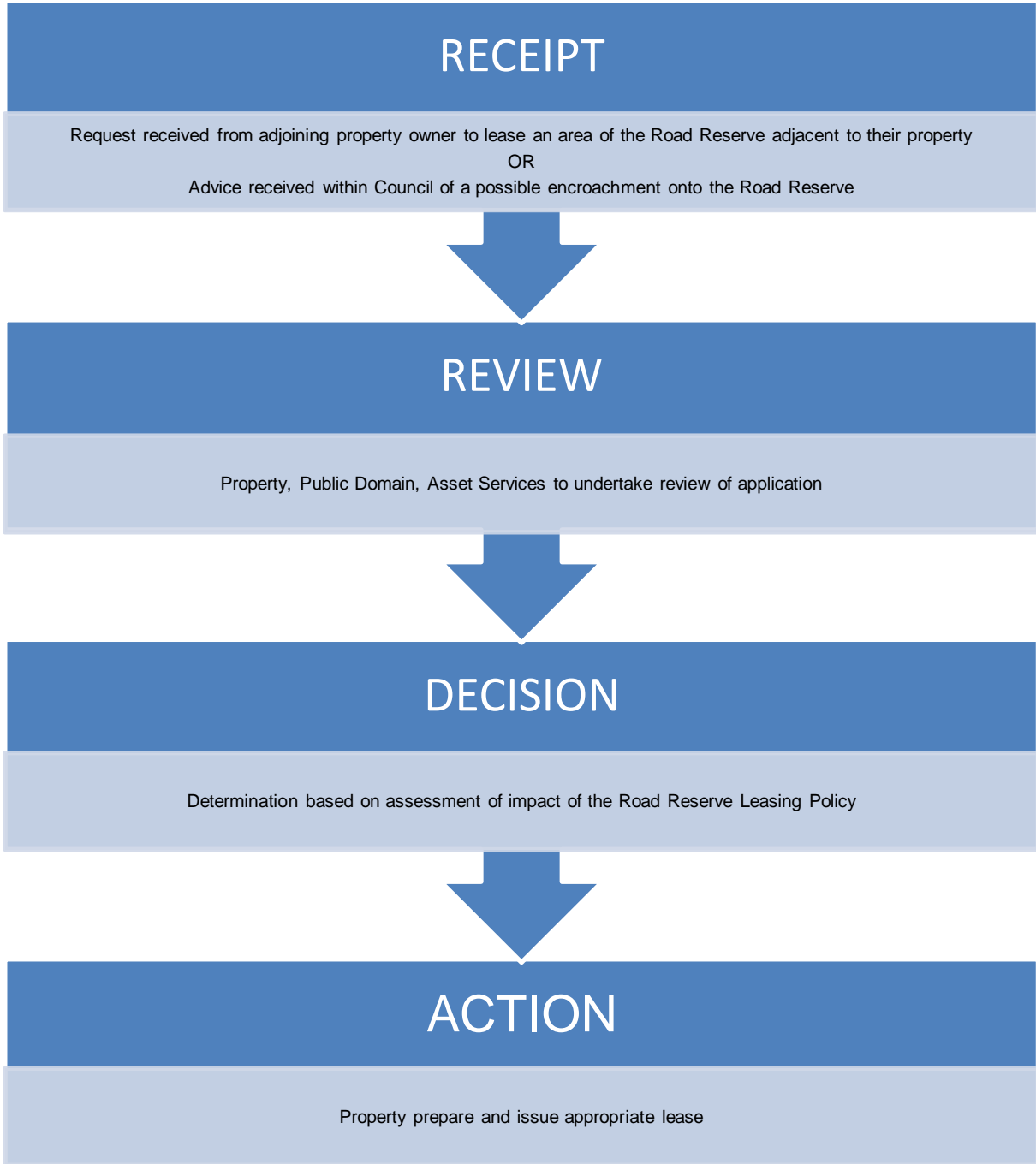
10. DEFINITION OF TERMS

Term	Meaning
Encroachment	Use of public land for private purpose by the adjoining owner.
Operational Land	Land owned by Sutherland Shire Council classified as Operational Land under <i>Local Government Act 1993</i> Division 1 of Part 2 of Chapter 6.
Road	Land dedicated as public road including “footway” as defined under the <i>Roads Act, 1993</i> that are not under the control of the Transport for NSW.
Road Reserve Lease	Formal agreement between Council and an adjoining owner to exclusively lease and area of road reserve.

End of Document

UNCONTROLLED COPY WHEN PRINTED - For up to date copy please refer to Sutherland Shire Council Intranet / Website			
Document Name: Road Reserve Leasing Policy		Policy Accountability Manager Property	
Version: 1.0	Approved by: Council (GOV026-23)	Minute No: 169	Date approved: 21 August 2023
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SCHEDULE A – ASSESSMENT PROCESS



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Document Name: Schedule A to Road Reserve Leasing Policy		Schedule Accountability: Chief Information Officer	
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SCHEDULE B – LEASE CONSIDERATIONS

1. COUNCIL APPROVAL

No structures shall be erected on the Road Reserve unless approved by Council. Applications must be made under Section 138 of the *Roads Act 1993* to seek permission to allow encroachments within Council's Road Reserve and under Section 153 of the *Roads Act 1993* to allow short-term leases of unused public roads.

2. EXTENT/TYPE OF AREA OCCUPIED

Consideration will be given to the extent and/or type of occupation and lease area occupied. Consideration is only given where the applicant is the owner or lessee of land adjoining the public road (not opposite side or isolated section of road). Some types may include but not limited to:

- Carports
- Landscaped areas
- Garages
- Fences
- Storage under driveways
- Any other temporary structure that can be easily demolished or removed

This Policy does not apply to:

- Temporary structures approved as part of Development Approvals process e.g. hoardings, site sheds, temporary fencing.
- Parties that have specific authority to create encroachments under State or Federal Legislation. E.g. driveway accesses, post boxes, power poles/cables, service mains, telecommunications cables/infrastructure.

3. LEASE TERMS

A road reserve lease must not exceed 5 years under Section 157 of the *Roads Act 1993*. The proposed lease must be advertised for 28 days providing opportunity for the public to make submissions under Section 154 and 155 of the *Roads Act*.



4. SAFETY

Consideration will be given to ensure the safe access of the road reserve for pedestrians, vehicles, cyclists and other road users. Potential risks will be considered including the potential to create a financial risk (e.g. maintenance and replacement) or a public safety risk for Council. The lessee will be responsible for public liability insurance and required to provide a copy of their certificate of currency.

5. APPLICATION

The application must include location sketches, plans, engineering details and certification, details of approvals for the work (Development Application or Construction Certificate). The application should be consistent with the Public Domain Design Manual.

All submissions received will be reviewed and processed by Council's Property Unit.

6. ENCROACHMENTS

Advice may be received about an encroachment onto the Road Reserve. These encroachments require a determination under the Public Property Encroachment Policy and can be one of three classifications: minor, restrictive, or exclusive.

Encroachments on the Road Reserve that are classified as restrictive or exclusive may have the response option of a road reserve lease.

7. STRUCTURES/WORKS

All structures must be able to be demolished or removed if required. The applicant is responsible for all costs relating to the demolition or removal. If the lease does not continue, the structure must be removed.

Council and any other public utilities or public authorities retain the right to undertake work within the leased area. Council is not liable to make good any damage to the leased area.

Applicants must obtain all necessary approvals prior to undertaking any constructions/works within the road reserve.

8. FEES AND CHARGES

Road Reserve Leasing fees and charges are reviewed and adopted by Council annually. A set annual fee applies for any garage/parking road reserve leases. Commercial uses of road are determined by a valuation.

An application fee will be payable upon submission. If the lessee sells their property an application fee will apply for the assignment of the lease.

SCHEDULE B TO ROAD RESERVE LEASING POLICY



End of Document

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