

COUNCIL POLICY

Council Policy Title:	Installation and Usage of Stock Underpasses
Council Policy ref. no:	13.4
Responsible Department:	Infrastructure and Services
Date of adoption/review:	23 October 2013

1. INTRODUCTION

Many farmers own land on both sides of roads which requires the frequent movement of stock across the road.

The stock movement poses a risk to the safety of motorists and the people in charge of the stock. It can also result in damage to the road surface, shoulders and drainage system which becomes a maintenance cost to the Council.

2. POLICY

The purpose of a policy for the installation of stock underpasses is to improve the safety of the road network by assisting local farmers to construct underpasses to allow for the daily movement of stock across the road carriageway safely without affecting other uses of the carriageway.

Stock Underpasses

Council supports the construction of stock underpasses as a means for improving road safety and limiting the damage to the road and its verges resulting from the movement of stock across roads.

When budget provisions allow, Council will endeavour to assist farmers to construct approved underpasses in suitable locations.

Council will offer assistance, as outlined in Guidelines in the form of a cash reimbursement up to \$3,000 excluding GST for costs associated with the guardrail installation and road reinstatement.

The property owner requesting the underpass shall be responsible for all other costs.

All underpasses must have a concrete floor and provisions included for drainage.

The location, design and construction of the underpass must be approved by the General Manager Infrastructure and Services. In addition the crossing shall comply with the current Vic Roads highway loadings and recommended structure widths for the particular road under consideration as determined by VicRoads Guidelines.

Ongoing maintenance and repair of the underpass is the responsibility of the property owner served by the underpass.

Approvals

All underpasses are to be constructed in accordance with an approved engineer's design.

When seeking approval to construct a stock underpass, plans must be provided that show a detailed locality plan and all design details necessary for the construction of the underpass including a set of structural computations. Information and design necessary to provide the appropriate drainage must also be submitted.

Approvals will not be granted where:

- a) There is less than 1.8m clear height in the underpass; or
- b) Where guardrails are not specified in accordance with the current Vic Roads standard.

Where an underpass is to be constructed under a local road, approval is to be obtained from Council.

Where an underpass is to be constructed under a declared main road, approval is to be obtained from both Vic Roads

3. GUIDELINES

Council Financial Assistance

Council assistance will be limited up to a maximum of the lesser of (a) 15% of construction costs of the underpass under the road formation including the reinstatement of the seal surface and associated safety guardrail, but excluding approach tracks and fencing; or (b) \$3,000 + GST. The property owner requesting the underpass shall be responsible for all other costs.

Specific Conditions

Upon approval of plans, the applicant shall enter into a formal standard agreement which shall be registered on title pursuant to Section 173 of the Planning and Environment Act which formalises the following arrangements and shall bind the applicant to the special conditions (see attached standard agreement).

Other Conditions

- i) The crossing is to be constructed in accordance with an approved design prepared by a structural engineer;
- ii) The underpass must be connected to an approved drainage system;
- iii) Appropriate service authorities such as Telstra and Powercor are to be advised of the proposed works;
- iv) Colac Otway Shire Asset Management Unit is to be advised at least 48 hours prior to the commencement of works;
- v) Traffic control signs are to be erected in accordance with Worksite Traffic Management (Roadworks Signing) Code of Practice and maintained for the duration of the works.
- vi) Approved backfilling around culverts must be placed in layers of not more than 150mm deep and must be thoroughly compacted before proceeding to the next layer;
- vii) The top 300mm of the backfill must be approved road making material, compacted in accordance with (vi) above;
- viii) Guard rails must be erected in accordance with the requirements of VicRoads current standards and to the satisfaction of the Manager Asset Management;
- ix) Colac Otway Shire is to be notified of completion of works and will arrange for the sealing of the surface as soon as practicable at full cost to the landowner;
- x) Council must be indemnified against any claims for damages resulting from any losses or injury associated with the stock underpass;
- xi) The landowner is required to maintain in good condition at all times, the underpass, drainage, guard rails and approaches to the complete satisfaction of the Manager Sustainable Assets;
- xii) "as constructed" drawings are to be supplied to the Colac Otway Shire, Asset Management Unit including all levels of the floor of the crossing, within 4 weeks of completion of the work.

4. IMPLEMENTATION AND REVIEW

This policy will be implemented by the Colac Otway Shire and is subject to periodic review.

ADOPTED/AMENDMENT OF POLICY

Policy Review Date	Reason for Amendment
10 July 1996	Adopted by Council
24 May 2006	Review
28 April 2010	Review
23 October 2013	Review

FORMAL STANDARD AGREEMENT
(Section 173 of the Planning and Environment Act)

THIS DEED OF AGREEMENT is made the _____ day of _____ BETWEEN

COLAC-OTWAY SHIRE COUNCIL of 2-6 Rae Street, Colac in the State of Victoria (hereinafter called "Council")

AND

Dairy Farmers (herein after called "the User")

RECITALS:

A

.....
.....
are the owners of certain land abutting both sides of the Road being the land more particularly described as (hereinafter called "the Land") and desires to construct a stock underpass under to enable stock to cross under that road.

B Council, will consent to the construction of the stock underpass subject to the following conditions:

In consideration of Councils' approval to the User causing a stock underpass to be built under..... and permitting the User to use the stock underpass the User agrees that:

- I. The stock underpass (the works) shall be constructed in accordance with plans submitted by..... being Drawing Reference sheet as amended to accord with Councils' requirements and which, as amended shall have met the approval of Council.
- II. The materials and works required to fully construct the stock underpass shall be supplied and carried out by a contractor approved by Councils' General Manager - Infrastructure at the User's expense, subject to any agreed contribution by Council, and shall be maintained by the contractor at the User's expense for a period of Four months after completion.
- III. The User shall obtain all relevant approvals and/or permits and ensure the Works, including the fenced approaches and walkways, are constructed in accordance with the plans and to the satisfaction of Council.
- IV. The User shall be responsible for the maintenance, repair and drainage of the stock underpass and shall reimburse to Council within one month of receiving a demand to do so to do any reasonable costs and expenses Council may incur in repairing or maintaining the stock underpass and drainage should the User fail to do so. Council will accept liability for the cost of repairs attributable to a specially authorised overloaded vehicle travelling over the underpass, prior notification which will be given by Council to the User. The User shall notify Council of any such known damage within 28 days.
- V. The User shall advise any future purchaser of the Land of any part thereof in writing of the existence and contents of this agreement. The User shall advise Council in writing of any such change in tenure of ownership of the Land or any part thereof within 28 days of such change.

- VI. The User shall;
- A. wholly indemnify and hold harmless Council against any and all demands actions and claims or suits for damages brought against Council by any body or party in respect of the construction, existence and/or use of the stock underpass; and
 - B. protect itself and Council against any legal action which may result from the design construction and/or usage of the stock underpass or its approaches by obtaining an adequate insurance cover by a reputable insurer for an amount agreed to by Council and in default of such an agreement for an insured amount nominated by an independent broker agreed to by the parties, or in default of such agreement an amount nominated by the President for the time being of the Law /Institute of Victoria.
- VII. If Council is of the opinion that the stock underpass is in need of Cleaning or repair for those matters for which the User is responsible a notice may be served on the User directing that such cleaning and/or repairs as specified in the notice shall be carried out by the User within a period of 28 days after service of the notice.
- In default of compliance by the User with such notice Council may carry out the repairs and charge the cost thereof to the user. Such cost may be recoverable in a court of competent jurisdiction.
- VIII. The stock Underpass shall:
- A. only be used for the passage of stock and by persons authorised by the User to assist with the passage of stock for which sole purpose this permission is granted;
 - B. not be used for the housing of animals, vehicles or farm machinery, or for the storage of produce or material at any time.
- IX. No attachments shall be made to any part of the stock underpass without prior approval in writing from Council.
- X. The User acknowledges that its continued use of the stock underpass is subject at all times to compliance by the User with terms of this Agreement. In the event of structural failure or evidence of structural weakness of the underpass, the User shall be responsible for rectifying the faults or removing the underpass and reinstating the road to proper condition. In the event of the road being widened and/or realigned in the future, Council; would bear the cost of extending or relocating the underpass.
- XI. No compensation shall be claimed from or paid by Council upon termination of the usage of the stock underpass in accordance with the terms of this agreement by mutual consent of Council and the User.
- XII. The User's rights to use the stock underpass as set out in this agreement shall pass on to its successors in title subject to the provisions of this agreement.
- XIII. This agreement shall be for a period of five years commencing on and terminating, subject to any clause contained herein on
- XIV. "Provided the User is not in breach of this Agreement, the User may elect by notice in writing to be delivered to Council no less than three months prior to the expiration of the initial term of Agreement and any extension(s) of the term thereof extend the period of this Agreement for a further five years. The length of the Agreement shall therefore be five years with three further option periods of five years each, ie 5x5x5x5x5.

Extension of this agreement pursuant to the exercise of an option period shall be deleted, so that at the end of the first period, there is only a further 5x5x5 years to run, after ten years then a further 5x5, and so forth”.

- XV. “A notice (including, without limitation a document) shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Agreement or last communicated in writing by that person to the person giving the notice, whichever is the earlier”.
- XVI. This Agreement supersedes any and all prior arrangements, agreements or undertakings and shall be binding notwithstanding any prior arrangements, agreements or undertakings made which may conflict with or be at variance with this agreement or any correspondence or document relating to the subject matter of this agreement which may have passed between parties hereto.
- XVII. Continued use of the underpass after the term of agreement will be subject to further agreement at that time. If there is no renewal of the agreement, the User will be responsible for removing the underpass and reinstating the road to proper condition.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first set herein before written.

COLAC-OTWAY SHIRE COUNCIL

The Common Seal of the Colac-Otway Shire Council was hereto affixed in accordance with its Local Law No. 4.

.....
Chief Executive Officer

SIGNED SEALED AND DELIVERED
by the said Users in the presence of

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.....
Witness