



# DISCONTINUANCE AND SALE OF UNNECESSARY ROADS AND RESERVES

## 1. PURPOSE

To facilitate the discontinuance and sale of roads and reserves that are no longer reasonably required for access or for the purpose they were originally set aside for.

## 2. OBJECTIVES

Council receives a fair and equitable price for land which was originally set aside for public use, but is no longer required for such use.

Land no longer required for its original purpose may be better utilised by either adjoining property owners or Council.

Adjoining property owners are provided with an efficient and equitable means of acquiring ownership of such land.

The removal of maintenance problems, security risks, occupation disputes and ownership uncertainty to abutting land owners.

## 3. SCOPE

This Policy applies to all roads, reserves and other similar land as defined below in Section 4 'Definitions'.

Note: Reference to a road in this policy, equally refers to reserves and other similar land.

## 4. DEFINITIONS

"Road" is as defined in Section 3 of the Local Government Act, 1989. The term "road" includes but is not limited to a right-of-way, street or footpath.

"Reserve" means a reserve (such as a drainage reserve) or other similar land for which Council has the power to deal with under section 24A of the Subdivision Act 1988, but does not include a reserve set aside for recreational purposes.

Note: Typical characteristics of the land defined above that this policy applies to includes land already in occupation by adjoining land owners, land whose title is still recorded in the name of the original subdivider but which Council has powers over, land being poorly maintained by abutting land owners, or land that does not have a practical use by Council.

## 5. GENERAL PRINCIPLES

5.1. Council itself may initiate the discontinuance and sale of a road or reserve. Alternatively Council may respond to an application from interested parties in relation to such land.

5.2. Council may retain for its own purposes the land from any discontinued road or reserve. Council may require a road or reserve to be retained in order to:

- Cater for potential future strategic needs;
- Provide opportunity for improved open space linkages;
- Increase to existing parkland areas;
- Provide a more direct and convenient route to parkland, community facilities, shops and other transport; or
- Provide for other municipal purposes.

- 5.3. When a proposed road or reserve discontinuance is investigated for the purpose of selling the land to abutting owners, the project will only proceed if it is financially viable and Council is able, as a minimum, to recover all costs incurred in undertaking the sale. Where the proceeds of the sale price do not exceed the costs incurred, then the sale price shall either be increased to cover the costs incurred or the project abandoned.
- 5.4. Council will not undertake road discontinuance's or subdivision of reserves which create unoccupied landlocked sections of land. Further, the creation of dead ends will be discouraged where it is considered they may become problem areas in the future.
- 5.5. Council will only consider the discontinuance of roads that are paved or sealed in exceptional circumstances.
- 5.6. In addition to any easements registered on title, Council reserves the right to place any requirements on the purchaser of land from a road or reserve or place any restrictions or requirements concerning the future use of the land. These requirements may be embodied in an Agreement with Council under section 173 of the Planning & Environment Act 1988.
- 5.7. Council discourages the unauthorised occupation of roads and reserves. Council may take steps to remove any unauthorised structures from a road or reserve to ensure that the land becomes and/or remains accessible for traffic or used for the purpose for which it was set aside.
- 5.8. Council will only maintain those roads on Council's Road Register. Not all roads within Whitehorse are on Council's Road Register. Generally unconstructed right of ways are not on the Road Register. If a road is not on the Road Register, it is the responsibility of the adjoining property owners.

## **6. LAND ALLOCATION**

Where land is to be sold it is to be allocated based on the following principles:

- Where an adjoining owner can demonstrate continuous and exclusive occupation of the land for in excess of 10 years, that owner will be given first option to purchase the land.
- If an abutting owner does not wish to purchase Council's proposed allocation of land, then that portion may be re-allocated to the other abutting property owner for purchase.
- In respect of land that is unoccupied, or has been occupied for a period less than 10 years, it is to be allocated or divided as near as is practical equally amongst abutting land owners. Variation to this may be made by mutual agreement of the abutting owners where approved by Council.
- The allocation or division of the land is at Council's discretion, subject to the requirements of any service authorities (e.g. location of drains).

## **7. PURCHASE PRICE**

- 7.1. Where Council has determined that land will be sold, such a sale will occur at current market value of the land, as assessed by a qualified property valuer appointed by the Manager Property & Rates. Criteria to be considered will include:
  - The area and dimensions of the land.
  - Any easements, encumbrances or restrictions on the land.
  - Potential purchasers being limited to adjoining owners.
  - The increase in value of any property which occurs as a result of the extra land.
  - The potential the property has for redevelopment.
- 7.2. Where a property owner can demonstrate, to the satisfaction of Council's Manager Property & Rates, exclusive occupation of the road or reserve for 15 years or longer, the purchase price may be discounted by 50% of the current market value. Evidence of exclusive occupation will include the signing of a statutory declaration together with any other supportive documentation.

- 7.3. In exceptional circumstances, and in order to achieve the objectives of the policy, further reasonable price reductions may be considered and approved by the Chief Executive Officer. Exceptional circumstances can include, but are not limited to:
- Where the purchase price of a parcel of land is substantially higher than the cost of an adjoining owner acquiring the land via an adverse possession claim.
  - Where the size of a parcel of land and the resultant purchase price based on that area, may prohibit a reasonable chance of Council being able to sell that parcel, without the application of a reasonable price reduction/discount.

## **8. COSTS**

In addition to the purchase price, the purchaser of the land shall be responsible for payment of their own conveyancing costs, and for all costs associated with the creation and lodgement of any easements or Section 173 Agreements over the land.

Where the sale of land contains infrastructure:

- Any costs of relocating the assets of any Service Authority (Yarra Valley Water, Telstra, and the like) are to be borne by the purchaser of the land.
- Any bluestone pitchers or other re-useable materials remain the property of the Council and the cost of recovery is to be apportioned to the purchasers.
- Any new or replacement drainage, and other associated costs are to be apportioned equally to those abutting owners involved in the road discontinuance or sale of a drainage reserve.

## **9. SALE PROCEEDS**

All gross revenue received from the discontinuance and sale of unnecessary roads and reserves is to be allocated to Council's Public Open Space Reserve.

## **10. GOODS AND SERVICES TAX (GST)**

In accordance with the provisions of the GST Act 1999, the sale of discontinued ROW's, roads and reserves will generally attract GST as from 1 July 2000. This obligates Council to ensure that the sale price of such land is GST inclusive.

## **11. RESPONSIBILITIES**

### **Manager Property & Rates**

- Discontinuance of roads, removal of reserve status, and the sale of land.

### **Manager Engineering & Environmental Services**

- Maintenance issues, illegal occupation, disputes regarding access, construction, drainage schemes.

## **12. RELATED POLICIES & LEGISLATION**

Sections 189, 206 and 223 of the Local Government Act 1989

Road Management Act 2004

Subdivision Act 1988

Charter of Human Rights and Responsibilities Act 2006