



BOROONDARA
City of Harmony

Discontinuance of Roads and Reserves Policy

2010



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Table of contents

- 1. Introduction 3**
 - 1.1. Purpose 3
 - 1.2. Scope 3

- 2. Background 3**
 - 2.1. Methodology 4
 - 2.2. Context 4
 - 2.3. Consultation 4
 - 2.4. Corporate framework 5

- 3. Policy statement..... 5**

- 4. Implementation and monitoring..... 7**
 - 4.1. Accountabilities 7
 - 4.2. Financial implications 7

- 5. References 7**
 - 5.1. Related documents 7
 - 5.2. Definitions 7



1. Introduction

This policy for the discontinuance and disposal of disused roads and reserves is to apply to all disused right of ways in Boroondara whether they are traditional vehicle or pedestrian right of ways or the less common drainage reserves. It is also to apply to road discontinuances where special circumstances dictate that part of a full sized road is no longer required for public use. It is acknowledged that in some cases a right of way may contribute to the Heritage aspects of a precinct or have an open space abuttal, and where this is the case, the discontinuance proposal will be referred to Strategic Planning for special comment.

1.1. Purpose

To document how the discontinuance and disposal of roads and reserves that are no longer reasonably required for access or for the purpose they were originally set aside for or for any other public purpose will be handled in a transparent and equitable manner ensuring proceeds are realised from any sale processes.

1.2. Scope

This policy applies to all roads, reserves and other similar land as defined below:

- "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.

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, or land that does not have a practical use by Council.

Whilst from time to time, Council becomes aware of unapproved occupation of right of ways (road) and reserves, application of this policy is believed to offer the best opportunity to negotiate sale and transfer without the need to resort to lengthy and costly legal processes.

2. Background

It is estimated that there are up to 2000 right of ways in the municipality, estimated at over 100 kilometres in length or 40 hectares in area. Of these, approximately 30 per cent are constructed (paved) and 70 per cent unconstructed.

Unconstructed right of ways typically arise from earlier private subdivisions of broad acres into house blocks and the creation of access roads from the original title. When individual house blocks were sold and removed from the parent title, eventually only roads, right of ways and reserves remained. A parent title may be, and on occasion has been sold, however, public access rights remain. Council can choose to construct the road or declare it an unconstructed public highway. Unconstructed right of ways are not a declared road under the Road Management Act.

Under section 7B of the Limitations of Actions Act 1958, a person cannot claim land by adverse possession in respect of Council titled land. Not all right of way property is held in Council title.

Right of ways enclosed within abutting properties for more than 15 years may be claimed by adverse possession. The original property owner is precluded from reclaiming ownership. Due to the cost of claiming adverse possession and time involved, sale by Council can be a cost effective means of acquiring ownership by interested parties without relying on expensive and time consuming legal processes.



Council does, from time to time, become aware of illegal occupation of right of ways and reserves. Council does not condone illegal occupation of land and will act to ensure that illegal occupation is not rewarded or encouraged

1. Occupation of Council titled land.
 - a) Where Council becomes aware of occupation of Council titled land, legal advice shall be sought as to how to achieve restoration of the occupied land to Council control or achieve sale if the right of way is not required.
2. Occupation of non-Council titled land (e.g. still in the name of the original subdivider).
 - a) Where the occupier can demonstrate adverse possession rights (i.e. occupation is longer than 15 years) then Council will not expend resources seeking removal of the occupation.
 - b) Where there is no evidence that adverse possession rights apply, Council will seek advice on how to establish Council title over the land with a view to then negotiating a subsequent sale to the occupier.
3. Where the parcel of land being occupied is minor, provides little amenity benefit, thoroughfare or access and is of little dollar value, Council may consider delaying any costly legal action and attempt to settle the matter by negotiation.

2.1. Methodology

A typical right of way discontinuance process includes:

Step 1

Either receive an application or determine that a right of way is no longer required for any public purpose.

Step 2

Confirm land title details and consult with internal departments including Asset Management, Statutory Planning, Parks and Gardens, Engineering and Traffic and other impacted departments.

Step 3

Obtain valuation information and write to interested purchasers to ascertain interest in potential sale transactions.

Step 4

Assuming interest exists, a report is prepared for the Director Corporate Resources to exercise the council delegation to commence the statutory discontinuance process and call for submissions under S223 of the Local Government Act 1989.

Step 5

Place Public Notice as required under S223 and write to objecting and interested parties regarding submissions and advising of entitlement under S223 to make submissions to a Council meeting.

Step 6

Review submissions and prepare report for Council consideration to formally discontinue and sell the right of way or reserve.

2.2. Context

Under this policy roads and reserves no longer required for its original purpose may be better utilised by either adjoining property owners or Council.

2.3. Consultation

Under this policy consultation will be undertaken about specific land parcels with all internal and external stakeholders prior to any road or reserve being discontinued. The relevant Ward Councillor will also be kept informed.



2.4. Corporate framework

This policy is consistent with Council Plan 2009-2014 Strategic Objective of "Strengthening Communities" via "Community Engagement" and "To develop and offer the best communication and community engagement practices to people with an interest in Boroondara" as well as "Responsible Managing Resources" and "We will proactively and prudently manage the assets and resources of our community".

3. Policy statement

Statement of intent

Through this policy, Council seeks to provide a consistent and efficient process for the discontinuance and sale of disused right of ways and reserves, and a high quality customer service to all those affected. Council will work towards this outcome by providing the community with clear direction about the circumstances in which right of ways and reserves will be discontinued.

Policy Statement 1

Council supports the discontinuance and disposal of right of ways and drainage reserves which are no longer required by the public or Council, abutting residents or are considered surplus, subject to appropriate consultation and adequate commercial return.

Policy Statement 2

Right of way adjoining public open space will not be discontinued and sold unless extenuating circumstances exist. Fencing along the open space proportion of any right of way abutting open space will generally be removed.

Policy Statement 3

Where a right of way is no longer required for any public purpose, Council's preference is to discontinue and dispose of the entire right of way at one time rather than engage in a series of individual transactions over a period of time.

Policy Statement 4

Where sale negotiations breakdown, Council reserves the right to commence legal processes to seek to transfer title to Council and seek reinstatement of right of way.

Policy Statement 5

Valuation of Land:

Principle 1

In order to assist with the discontinuance and disposal and subject to the proposal having sufficient support, Council will offer the land for purchase at the current market value, as determined by Council's contract valuers. The valuation philosophy under this policy will reflect the additional value the subject parcel of land will add to the value of the existing property of the potential acquirer and will take into consideration the market value of land within the immediate locale having regard to the location of the subject and characteristics such as:

- Whether the land is incapable of being developed in its own right given the small land area;
- Whether the land is only marketable to the adjoining owners;
- Whether the shape of the site is long and narrow, and;
- Whether the land is encumbered with an easement.

Consideration of these factors will generally result in the discontinued right of way being offered for sale at 50% of full commercial value.

Principle 2

Where a property owner can demonstrate exclusive occupation of the road or reserve for 15 years or longer, the purchase price may be discounted for the specific circumstance of the current market value. A Council report seeking authorisation for the price negotiated will occur. Evidence of exclusive occupation



will include the signing of a statutory declaration together with any other supportive documentation. Council's GIS aerial photograph records will also provide information.

Principle 3

In exceptional circumstances Council may consider further price negotiation. 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 adverse possession claim criteria are satisfied).
- Where the size of a parcel of land and the resultant purchase price based on the area, may prohibit a reasonable chance of Council being able to sell that parcel to any other party.

In such instances a report will be presented to Council for determination.

Division of Land

The division of disused right of ways and reserves will be on an equal share basis to adjoining property owners. Council will always provide abutting owners with first opportunity to purchase a discontinued right of way before seeking offers from other parties.

If a neighbour adjoining the land is not interested in purchasing a share, the "full" area may be offered to other adjoining owners. An exception exists where the land in the right of way has been occupied for more than 15 years. In this case, the land may be offered as occupied.

Where the land has been occupied for in excess of 15 years, and evidence of express permission to do so by Council is provided, the land should be offered in the first instance to the occupier of the land at the discounted value. If the occupier rejects the offer to purchase, the land may be offered to the other adjoining owners.

It is considered that offering the land on a share basis is the fairest approach. In circumstances where the division of land on a share basis proves unacceptable to all parties, negotiations will be conducted. Most cases can be resolved amicably, however there may be instances where the occupier of the land will not relinquish occupation and purchase the land from Council due to accrued possessory rights. Under these circumstances the sale will not proceed.

Where practical, Council will consider offers to purchase partial segments of a discontinued right of way.

Costs

In addition to the purchase, 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. Council will provide a standard S173 Agreement which must be used as the template for the agreement.

Where the sale of the land contains infrastructure:

- Any costs of relocating the assets of any service authority 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.
- Any required fencing or special conditions relating to special or unique fencing requirements shall be costs borne by the purchaser. This would be particularly relevant in ensuring that overland drainage flow is not restricted in any way as a direct result of the discontinuance and sale of a right of way or drainage reserve to adjoining owners.



GST

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

4. Implementation and monitoring

4.1. Accountabilities

For all queries or feedback regarding this policy document, please contact the responsible officer below.

Contact	Contact number	Contact e-mail
Coordinator-Revenue & Property	9278 4444	revenue@boroondara.vic.gov.au

The responsible officer coordinates the implementation, maintenance and review of this policy; ensuring stakeholders are aware of their accountabilities.

4.2. Financial implications

This policy aims to provide Council with a more relevant pricing structure to facilitate the disposal of roads and reserves that are no longer required for public access thus generating once off income for Council.

Each sale of a discontinued right of way will realise proceeds for council and incur a small level of legal and conveyancing costs. In the event that an individual transaction cannot cover the costs to be incurred, Council will not proceed with the transaction.

5. References

5.1. Related documents

The following is legislation required to be considered in relation to this policy:

Local Government Act 1989
 Road Management Act 2004
 Subdivision Act 1988
 Limitations of Actions Act 1958
 Transfer of Land Act 1958

5.2. Definitions

Council	Indicates reference to the City of Boroondara as a geographical area and also refers to the entity which has the authority to make decisions on behalf of the Boroondara community.
Road	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	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.