

# Appendix 5

## **Policy Review - Discontinuance and Sale of Roads and Rights of Way and Drainage Reserves Policy**

# Discontinuance and Sale of Roads, Rights of Way and Drainage Reserves

April 2018



# 1 Policy intent

To provide guiding principles to ensure that roads or right of ways (ROWs) and drainage reserves are kept open and available for use where they are required for access, drainage or strategic purposes.

Where such land is no longer required, this Policy will facilitate the discontinuance of roads, ROWs and removal of the reserve status from drainage reserves and facilitate the sale of that land where considered suitable.

This policy ensures Council complies with the provisions of the *Local Government Act* 1989 and the *Planning and Environment Act* 1987 when proposing to sell land comprised within a road, right of way, drainage reserve.

# 2 Purpose

The purpose of the Discontinuance and Sale of Roads, Rights of Way and Drainage Reserves Policy (the Policy) is to update and combine prior Road Discontinuance Policies to effectively manage and administer those processes involved with such proposals. This policy combines the following two policies:

- Rights of Way Discontinuance, Closure and sale of rights of way policy adopted by Council on 10 December 1996 and amended on 15 June 1999.
- Rights of Way - Unmade Laneways adopted by Council on 10 October 2006 and amended on 10 September 2013.

# 3 Scope

This policy sets out the conditions and principles under which a road may be discontinued or the reservation removed from a drainage reserve and the land sold.

# 4 Definitions

In the context of this Policy, the following definitions apply:

**approved development** means a development approved under the Hobsons Bay City Council Planning Scheme for land that includes a road or ROW that is required to be discontinued.

**Council** means Hobsons Bay City Council

**discontinuance** means the exercise of power under clause 3 of Schedule 10 of the Act which is effected by a notice published in the Government Gazette

**encroachment** means an intrusion onto another's property rights either by occupation of a building or encroachment into the airspace above a road

**market value** means the value as determined by a qualified valuer, based on the following methodology and criteria:

- the land area and dimensions of the land

- the highest and best potential use of the land
- increase in value to any abutting property as a result of the transfer of the extra land – as a before and after valuation
- the potential for, or the enhancement of, an abutting property for redevelopment as a result of the transfer of land
- the additional costs to be applied as the result of any easements, encumbrances or other assets being retained on the land as a requirement of Council or other statutory authorities

**obstruction** means the placement of a fence, gate, equipment or any other material, plantings or thing to prevent lawful access to a road or ROW

**reserve** means land reserved on title for the purposes of drainage or other purposes, including revenge strips, but not land set aside for recreational purposes

**road** means a road or right of way (ROW) which may be constructed or unconstructed and has the same meaning as specified in Section 3(1) of the *Local Government Act 1989* (LGA) and 3(1) of the *Road Management Act 2004* (RMA)

**subject land** means a parcel of land, the subject of a Proposal

## 5 Objective

Through this policy, Council seeks to:

- establish the framework and provide a consistent and efficient process for the discontinuance of the road status from a road or ROW that is 'not reasonably required for public purposes' or the removal of a reservation from either a drainage reserve or a revenge strip of land
- ensure that all land required for access, drainage purposes or other strategic purposes be retained by Council for access by the public and, where required, transferred to Council for strategic or other purposes
- ensure that through the discontinuance and sale of disused roads or ROWs and the removal of a reservation processes, Council provides a high quality customer service to all parties affected and will provide the community with clear direction about the circumstances in which roads or ROWs will be discontinued and the reservation from a drainage reserve or revenge strip of land be removed

The discontinuance and sale of roads, ROWs and drainage reserves is intended to:

- reduce Council's long term maintenance costs for parcels of land not required for access or other municipal purposes
- reduce on-going risks and liability for Council
- establish the criteria for dealing with adjoining landowner where either part or the whole of a road or ROW is occupied by those adjoining land owners
- provide an equitable return for the ratepayers and residents of Hobsons Bay City Council achieved through the disposal of land from discontinued roads, ROWs or drainage reserves

## 6 Policy

The discontinuance of a road or ROW or removal of the reservation of a drainage reserve (Proposal), is viewed as a significant action because of potential impacts on the loss of legal access by adjacent landowners and the public.

Council will encourage the sale of such land that is not being used for pedestrian or vehicular access or is no longer required for strategic or public use.

It is the policy of the Council that a road or ROW *should not* be discontinued or the reservation removed from a drainage reserve or revenue strip of land without assessing:

- requirements of Emergency Services and statutory service authorities for effects on abutting properties and buildings and their owners and occupiers with respect to access to their premises
- impacts on Council infrastructure and services
- future strategic purpose or opportunity for activation
- the historical significance of a road or ROW

The Council may support a Proposal to enable the land to be sold where:

- it is determined that a road or ROW is 'not *reasonably required* for general public use' and has no strategic or heritage value to Council
- a Proposal does not impact upon access to other abutting properties and buildings
- amenity improvements can be achieved particularly where the land has become a haven for anti-social behaviour or a place to dump rubbish
- such a Proposal rectifies an anomaly which will result in greater certainty of property ownership and associated rights
- Council can recover all costs associated with a Proposal

Roads or ROWs should only be closed under the provisions of the *Planning and Environment Act 1987* when the closure is associated with an overall redevelopment or rezoning of land.

## 7 Governance Statement

Council will facilitate a Proposal where the following has been undertaken:

- appropriate consultation has occurred
- legislative requirements have been met; and
- it is considered that a road discontinuance or the removal of the reserve status and sale is in the best interests of the ratepayers and residents of Hobsons Bay City Council

Where Council has undertaken the statutory procedures associated with a Proposal and, considered any submissions received, it may decide to proceed with a Proposal and sell all or any part of the ROW or the reserve or to reject the proposal in its entirety.

## 8 Illegal Occupation of Roads or Drainage Reserves

Council discourages unauthorised occupation of roads, ROWs or drainage reserves and will take steps to remove such illegal occupation to the provisions of the *Road Management Act 2004* (RMA) or Council's relevant Community Local Law.

## 9 Easements or Covenants

Council reserves the right to create an easement or place a caveat or covenant on or over the land as it deems fit in order to protect its interests or the interests of other service authorities who may have assets on, below or above the subject land.

## 10 Principles – Discontinuance of a Road

Conditional on the outcome of a public consultation process (see section 223 of the *Local Government Act 1989*) (LGA), Council has the power and complete discretion whether or not to proceed with a Proposal within its municipality.

All actions must be lawful and properly carried out taking into account relevant Council policies including public consultation and the impartial consideration by Council of any submissions received under that process.

The legislative provisions can be applied to a Proposal within the scope and limitations of this policy, regardless of their size, location, importance, underlying ownership and public or private status.

The gazettal of a Notice of Discontinuance in the Victoria Government Gazette frees the land from all private and public rights and encumbrances save for certain rights and powers of statutory or public authorities and vests the land in Council, at which time, Council can sell or retain the land for municipal purposes.

## 11 Removal of Drainage Reserve Reservation

Where Council deals with a drainage reserve or a revenge strip (excluding a recreation reserve), Council officers will prepare a report for Council consideration and decision to apply for a planning permit for the removal of the reserve status and vesting of the land in accordance with section 24A of the *Subdivision Act 1988*.

A section 24A plan of subdivision will be prepared for certification by Council and lodging at Land Registry. This subdivision plan will remove the reserve status and vest the land in Council at which time, Council may proceed with the sale of the subject land.

## 12 Relocation of Assets

The relocation or replacement costs for any asset within a section of land will be borne by the purchaser of the land. These would include the following:

- statutory authority assets including, water, gas, sewer, electricity and telecommunications

- replacement drainage or new storm water drainage may be required (requests for new stormwater drainage would be referred to the special charge scheme process whereby agreement would be sought from all benefiting properties to contribute to the cost of the works)

## 13 Consultation

Council is committed to an inclusive and transparent consultation process with all stakeholders including ratepayers and residents within Hobsons Bay that ensures compliance with relevant legislation and internal policies and strategies.

A Proposal will be referred to all internal Council departments for comment to ascertain any objections or requirements Council may have either in the short or long term.

A Proposal will also be referred to all statutory authorities including water, gas, telecommunications, electricity, postal and emergency services (fire, police, ambulance etc). Such consultation will be undertaken and completed prior to consideration by Council.

A Proposal will be considered in accordance with the provisions of the LGA and also comply with Council's corporate standards including publication of a public notice in the local newspaper and published on Council's website. Formal communications will also be directed to all parties who may be impacted by such a Proposal.

A road on Crown land is not to be discontinued as a precursor to reservation under the *Crown Land (Reserves) Act 1978* without the in-principle agreement of the appropriate state government authority.

## 14 Sale of Land - General

Where Council proposes to sell land pursuant to this Policy, Council has an obligation to its residents and ratepayers to sell the land at the current market valuation, which value is required to be established by a licensed valuer appointed by Council.

Deviation from selling land at a current market valuation would only be considered by Council where a community benefit can be documented and the community benefit outweighs any loss in financial return. On this basis, an amount which is lower than the current market value may be accepted after consideration by Council and pursuant to formal resolution at an Ordinary Meeting of the Council.

Where State Government policy applies and, where an acquiring entity can only purchase land for the amount identified by a valuation by the Valuer General, the Valuer General valuation will be used as the sale price.

## 15 Sale of land – Adverse Possession

Adverse possession rights refer to the initial period of fifteen (15) years exclusive occupation before an occupier of land can take action to prevent others from interfering or dealing with the land.

Adverse possession does not in itself remove the road status of the land nor does it

remove the reserve status from a drainage reserve. Exclusive possession for a period greater than 30 years is required to adversely possess land unencumbered.

Where Council has received a formal application for a Proposal and where an adjoining land owner provides evidence that:

- there has been exclusive occupation of the land for fifteen (15) years or more, and the land is not owned by Council but rather vested in Council, and
- there is no history of opposition by other neighbours to the illegal take-over of the subject land

Council may first offer the sale of the land to that occupier in accordance with Adverse Possession entitlements.

In the event an occupier of the subject land does not wish to proceed with the purchase and the land is considered to provide a greater public need and its usage is required to be reinstated, then Council will consider pursuing legal options to remove such occupation.

In the event that an occupier does not wish to purchase the land, Council will seek legal advice as to options available to Council which may include the removal fences or other obstructions and encroachments and/or offer the land to an adjacent property owner at the current market rate.

## **16 Sale of land – occupied**

Where land has been occupied by an adjoining property owner but adverse possession rights have not accrued, Council may first offer the sale of the land to that occupier in accordance with the current occupation of the land. In the event that the occupier does not wish to purchase the land, Council may either request the occupier to remove all fencing and/or obstructions or enter into a licence agreement with Council.

## **17 Sale of land - unoccupied**

When considering the sale of land where it is unoccupied, any offer to adjoining property owners should be undertaken in sections to avoid a situation where parcels of land remain unsold with the resultant effect that land can become landlocked.

In most instances, each individual property which is the subject of a Proposal and, particularly where the land is a road, equal carriageway right entitles may exist for the use of that land. Accordingly, when offering land for sale, it will be upon the basis of equal distribution to adjoining owners with new boundaries being as near as possible to parallel or right angles to the centre line of the subject land, other than by mutual agreement of the abutting owners and Council.

Where more than one abutting property owner is interested in purchasing the land, Council may divide the land into several parcels of land. However, where this is not possible due to the existence of drainage or sewerage assets or other easements over the land, the land will be allocated and offered for sale in some other proportion as determined by Council.

If an abutting owner does not wish to take up Council's offer to purchase the land, where



practical, that portion shall be offered to other abutting property owners.

## 18 Licence Option

In circumstances where portions of land remain untransferred and is landlocked, Council will enter into a licence with such occupiers on the basis of a nominal fee requiring the occupier to fully maintain the land to Council's satisfaction. The agreement will be recorded on Council's rating system.

Land, that is the subject of a licence, may be purchased by the occupiers at any time in compliance with the provisions of the LGA.

In recognition of the benefits that a license arrangement provides for Council which includes the opportunity of eventual sale of the untransferred portions of a former road or right of way, and protection against adverse possession claims, administration costs for the preparation of such licence will not be charged to licence holders.

## 19 Sale Price – Land Valuation

Where Council has adopted a resolution to proceed with a Proposal, subject to the provisions of the LGA, Council will offer the subject land for purchase at the current market value which value will be as determined by an independent licensed Valuer appointed by Council.

The valuation under this Policy will reflect the additional value the subject parcel of land will add to the value of the existing property and will take into consideration the current market value of land within the immediate locale having regard to the location of the subject land and characteristics including whether the land is:

- encumbered by an easement
- incapable of being developed in its own right given the small land area
- only marketable to the adjoining owners
- long and narrow

## 20 Payment of costs

Costs will be shared *equally* by the purchasers and will be paid at the same time as the purchase price.

Costs include publication of public notice costs, legal fees, surveyors fees, valuation costs, conveyance costs, State Government fees and charges (such as stamp duty, title registration costs and lodgement fees), Goods and Services Tax and any costs associated with the relocation of fences.

## 21 Transfer of Title

The transfer of the title and interest in either a road or reserve will occur upon Council receiving full and final payment of the agreed sale price of the land together with all

associated costs.

If drainage schemes and/or creation of easements are required they shall be implemented at the full expense of the occupiers/prospective purchasers. Upon completion of drainage works title transferral may commence.

Any costs associated with the reconstruction of drainage or other assets below ground, including the creation of easements will be included in the cost of the sale and borne by the purchaser.

## 22 Consolidation of title

Council shall encourage the consolidation of the title to issue for a parcel of land from a former road, ROW or drainage reserve with the title to the abutting landowners title within six (6) months of the sale of the land. The title details to issue upon registration of title will be noted on Council's property records upon settlement.

## 23 Related Documents

Asset Management Policy dated August 2017

Heritage and Streets Laneways Policy and Management Plan July 2007

Open Space Plan Policy

## 24 Related Legislation

### ***Local Government Act 1989 (LGA)***

Under clause 3, schedule 10 of the Local Government Act 1989, Council has the authority to discontinue a road or part thereof and sell it to a third party or retain it for municipal purposes. Section 207C (Sewers, pipes, wires etc. of public authorities not affected)

Section 189 (Restriction on power to sell land).

### ***Land Act 1958***

Council is required to advise if it concurs with the Crown to discontinue a Government road under section 349 of the *Land Act 1958*. If a Government road is discontinued it becomes the freehold property of the Crown and may be sold by the Crown.

### ***Planning and Environment Act 1987 (PEA)***

A road may be closed by an amendment to the Planning Scheme under section 43 *Planning and Environment Act 1987* or Section 44 *Planning and Environment Act 1987* (Closure of roads on land other than Crown land).

### ***Road Management Act 2004 (RMA)***

Council is required to establish a Register of Public Roads which includes those roads i considered to be rights of way or laneways.

### ***Subdivision Act 1988***

Council has the power under Sections 20 and 24A of the Subdivisions Act 1988 to initiate procedures to remove and vest in itself all, or part of a drainage reserve, or sell it to a third party.

## **25 Further Information**

For further information contact Council's Property Management Advisor on 9932 1237 or email [property@hobsonsabay.vic.gov.au](mailto:property@hobsonsabay.vic.gov.au)

## **26 Document Control**

<b>Policy Name</b>	<b>Discontinuance of Roads, Rights of Way and removal of reservation from Drainage Reserves</b>
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## **Version History**

<b>Version Number</b>	<b>Date</b>	<b>Authorised by</b>