



POLICY TITLE: Discontinuance and Sale of Roads, Right of Ways and Drainage Reserves

DATE APPROVED BY COUNCIL: May 2009

DATE OF NEXT REVIEW: September 2012

RESPONSIBLE DEPARTMENT: Properties

STATEMENT OF INTENT:

To provide guiding principles to ensure that roads, right of ways (ROWs) and drainage reserves are kept open and available for use where they are required for access, drainage or strategic purposes. In situations where such land is no longer required, this Policy will facilitate the discontinuance of roads, ROWs and the removal of reserve status from drainage reserves and the sale of such land where considered suitable. This Policy establishes principles for consultation, achieving an equitable return to Council and an opportunity for optimum utilisation of such parcels of land.

POLICY OBJECTIVES:

ROWs and drainage reserves were developed to satisfy an historical need and were documented in early plans of subdivision. In many cases this land is still required for access, drainage or other strategic purposes and as such Council will ensure the land remains open and available to the public.

Land required for the following uses will be retained for that ongoing need: -

- (i) An ongoing need for access, both vehicular and pedestrian;
- (ii) Is constructed and maintained as a road or ROW by Council;
- (iii) Has a strategic value to Council;
- (iv) Provides recreational linkages or linked pathways;
- (v) Is required to increase existing parkland;
- (vi) Is required for drainage or flood mitigation or location of other services;
- (vii) Is required to be preserved for significant vegetation;
or
- (viii) Is generally required for municipal purposes.

In situations where the land is no longer required for these uses, Council supports the discontinuance of roads, ROWs or the removal of reserve status from drainage reserves. Such land will be either retained in Council ownership or will be sold.

If Council does not require the land for the above reasons, the discontinuance, or removal of reserve status, and potential sale will be considered in accordance with this Policy.

POLICY STATEMENT:

These objectives will be achieved, by addressing issues taking account of Council's values, inclusive of equity, accountability, transparency, and responsibility. These values will provide the foundations for decision-making. This will be achieved through the following key areas:

- (i) Provide an efficient, consistent and transparent process for potential purchasers;
- (ii) Ensure appropriate consultation about the discontinuance of roads, ROWs or the removal of reserve status from drainage reserves;
- (iii) Ensure legislative requirements are met;
- (iv) Optimise the value of the sale of land for Council; and
- (v) Encourage the sale of such surplus land.

RELATED POLICIES, PROCEDURES, GUIDELINES AND FORMS:

The process for sales of such land will be carried out in accordance with the document "The Sale and Discontinuance of Roads, Right of Ways and Drainage Reserves Procedures".

DELEGATION:

The Group Manager Infrastructure Services will be responsible for the implementation and management of this Policy and the relevant procedures. An instrument of delegation has been adopted by Council to provide delegated authority to the Group Manager Infrastructure Services.

LEGISLATIVE REQUIREMENTS

- I. Under clause 3 of schedule 10 of the *Local Government Act 1989*, Council has the authority to discontinue a road or ROW, or part thereof, and sell it to a third party or retain it for municipal purposes.
- II. Council also has the power under section 24A of the *Subdivision 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.

DEFINITIONS

In this Policy the following definitions apply: -

- (i) "**DRAINAGE RESERVE**" means a drainage reserve or other reserve not set aside for other recreational purposes.
- (ii) "**RIGHT OF WAY**" (**ROW**) means a road as defined in section 3 of the *Local Government Act 1989*.
- (III) "**ROAD**" means a road as defined in section 3 of the *Local Government Act 1989*. The term "road" includes, but is not limited to, a right of way (ROW), a street or a footpath etc.

GENERAL PRINCIPLES

The following general principles apply to roads, ROWs and drainage reserves: -

- (i) Council discourages the unauthorised occupation of roads or ROWs or drainage reserves and will take steps to remove such illegal occupation.
- (ii) Council will encourage the sale of such land that is not being used for pedestrian or vehicular access or is no longer required for other strategic or public use.
- (iii) Council will only sell such land holdings to abutting property owners.
- (iv) Generally, all abutting owners will be given an equal opportunity to purchase such land holdings that abut their property. Accordingly, officers will attempt to divide land equally. However, Council will acknowledge and give preferential allocation rights to abutting property owners who can demonstrate continuous exclusive occupation of the land (i.e. occupation that would otherwise give rise to an adverse possession claim).
- (v) Council will recover all costs incurred in the application of this Policy.
- (vi) Council reserves the right to retain any such land holdings once Council takes title to such land if it is seen to be appropriate. This land may be retained to: -
 - Meet a strategic need,
 - Protect Council's rights of ownership, or
 - Sell at some point in the future in accordance with this Policy.
- (vii) Council has the right to place an easement, covenant, or create an easement on or over the land parcel in order to protect existing rights or future requirements. If there is a requirement by statutory authorities to relocate any assets located underneath the subject land (e.g. drains), all costs will be borne by the purchaser.
- (viii) Council encourages the planting of trees on land that is sold.

ANTICIPATED RETURNS AND COSTS

Assessment of sale prices

Revenue achieved from the sale of discontinued roads or former drainage reserves will be held in a fund and utilised for the development of Council's land holdings or the purchases of additional land for open space.

The land will be sold at market value as determined by a qualified valuer, contracted to Council, taking into account relevant criteria including the following:

- (i) The land area and dimensions of the land;
- (ii) The increase in value of any property which occurs as a result of the extra land;
- (iii) The potential the property has for redevelopment; and
- (iv) Any easements, encumbrances or long-term occupation to be retained on the land as a requirement of Council or other statutory authorities.

If a property owner can demonstrate continuous exclusive occupation of the road or reserve for 15 years or longer and they have a right to claim the land by adverse possession, consideration may be given to discounting the purchase price by up to 50% of the current market value.

The purchase price may be set at a lower amount, pursuant to delegated authority, if it is considered that the benefits that will accrue to the community by the achievement of one or more of the objectives of this Policy would not be reasonably obtained unless such a lower price is charged.

Council may, at its discretion, decide to waive fully or partially the valuation component of the land parcel being transferred if it deems the land transfer will serve some "public purpose". Such action will require a resolution of Council.

Costs

All costs associated with the discontinuance and sale of roads or right of ways or the sale of drainage reserves are to be shared by the applicants. These costs include: -

- Legal fees;
- Title Registration costs; and
- Relocation of fences.

Replacement costs

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

- Statutory authority assets such as those belonging to water, gas or telecommunications organisations.
- Bluestone pitchers (if any), or other re-useable materials as these remain the property of Council.
- Replacement drainage or new storm water drainage, if required.

GST

In accordance with the provisions of the Goods and Services Tax Act 1999, the sale of Council property, including the sale and discontinuance of ROWs, roads and the sale of drainage reserves, will generally attract GST. This obligates Council to ensure that GST is added on to the sale price or that the sale price is inclusive of GST.

Terms payment

The full purchase price will be paid to Council at the time of settlement, except at the discretion of the responsible officer when, in special circumstances, the terms may be extended to allow equal payments over up to three years. In relation to term payments, an additional service charge will be assessed to cover any administration costs. The transfer of land will not be passed on to the purchaser until the purchase price plus any costs or additional amounts are paid in full.

TARGET OUTCOME

The achievement of the objectives of this Policy will:

- (i) Reduce Council's long term financial and legal liability for discontinued roads, ROWs and drainage reserves (e.g. maintenance, cleaning and public liability);
- (ii) Improve local amenity for Bayside residents (e.g. increasing security of property by the elimination of access points);
- (iii) Formalise ownership of roads, ROWs and drainage reserves providing a clearer control of the land and allocation of obligations; and
- (iv) Maximise additional revenue generated from:
 - (a) Funds from land transfers;
 - (b) Reduction in legal and financial liability; and
 - (c) Increase rate revenue.

DATE OF LAST REVIEW: **MAY 2009**