



1. Introduction

Many of the roads, right of ways and reserves within the City of Whitehorse were originally designed to serve specific purposes, and over time, some of these roads may no longer be needed for their original purpose.

Whitehorse City Council acknowledges the importance of managing these roads effectively to ensure they continue to serve the best interests of the community.

To illustrate this an example is outlined below:

Laneway X was originally designed to provide access to the rear of the properties on X Street for services such as garbage collection. Over time, however, the properties have been renovated and now have direct street access for these services. As a result, the road (laneway) is no longer used.

In this case, the laneway could be considered a “discontinued road”. It no longer serves its original purpose and is not reasonably required for regular, ongoing public use. The Council, under this Policy, could decide to discontinue the laneway and potentially sell it. The land could then be used for an alternative purpose, such as expanding the adjoining properties. The decision would be made in accordance with the principles and procedures outlined in the policy including and not limited to community engagement.

2. Definitions

- **Discontinuance:** The act of formally closing a road, right of way, or reserve, ceasing its public use.
- **Road:** A public way for the passage of vehicles, pedestrians, and animals, and includes part of a road.
- **Right of Way:** A strip of land over which a road, path, or route is established for the passage of vehicles or pedestrians.
- **Reserve:** Land set aside for a specific purpose, such as drainage, public recreation, or environmental conservation.
- **Unlawful Occupation:** The unauthorised use or possession of Council land.
- **Abutting Land Owners:** Property owners whose land shares a common boundary with the road, right of way, or reserve in question.
- **Valuations:** The process of determining the current market value of the land, as assessed by a qualified property valuer appointed by the Council.



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- **Fees and Charges:** Costs associated with the application, legal, and surveying processes incurred during the discontinuance and sale of roads, right of ways, and reserves.
- **Public Use:** The nature and extent of the present and past use of the road; and the likelihood of the road being required for ongoing and future use, both vehicle and pedestrian.

3. Purpose and Objectives

The purpose of this policy is to establish a transparent framework for the discontinuation and potential sale of roads that are deemed no longer required for public use. This document sets out the principles and procedures that will guide decision-making.

The discontinuance and sale of roads is carried out according to the provisions of Clause 3 of Schedule 10 of the Local Government Act 1989.

Whitehorse City Council aims to retain all land that is reasonably required, ensuring it remains open and accessible to the public. Conversely, land that is not reasonably required for public use will be appropriately managed or divested. This approach serves to minimise the Council's long-term financial and legal responsibilities associated with unneeded land while also presenting an opportunity for adjacent property owners to acquire ownership of such land.

Objectives:

- To provide a consistent and equitable approach to managing, discontinuing, and potentially selling roads.
- To ensure that roads that remain reasonably required for public use are retained.
- To consider the discontinuance and sale of roads that are no longer reasonably required.
- To achieve satisfactory financial and environmental outcomes that benefit both Council and the community.

4. Policy

Whitehorse City Council reserves the right to manage, discontinue, retain, or dispose of any road, right of way, or reserve at its sole discretion.

Whitehorse City Council reviews and considers the disposal of a road, right of way, or reserve if it is deemed not reasonably required and its disposal could lead to a more beneficial use of the land. Land is considered not reasonably required if

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it does not provide for regular, ongoing vehicular access, does not serve drainage purposes, or does not hold any other strategic value.

The bluestone paved laneways that are found within the City of Whitehorse have historic and cultural significance. Council is committed to ensuring that bluestone paved laneways will remain open for public use.

Principles

The following general principles will apply in relation to implementation of this policy:

- Any proposal for the discontinuance and sale of a road, right of way, or reserve will be assessed on a case-by-case basis.
- Council will consider the strategic value of the land, the potential benefits of its disposal, and the impact on the community and environment.
- Council will ensure that the process is transparent, fair, and in accordance with relevant legislation and regulations.
- Land will be sold at current market values of the land, as assessed by a qualified property valuer appointed by the Council.
- Purchases will be charged an application fee as set out in the annual Budget – Fees and Charges and will be required to pay legal and surveying costs.
- Discounts on the purchase prices and fees and costs may be made at the discretion of the Council.
- Council retains the discretion over land allocation considering land occupation, interest in purchasing and location of services such as drains.

See Appendix 1 for a step-by-step process.

Unlawful Occupation

Whitehorse City Council is committed to protecting its roads, right of ways, and reserves from unlawful occupation. Unlawful occupation refers to the unauthorised use or possession of Council land.

Where instances of unlawful occupation are identified the unlawful occupier will be provided with several options. These include:

- **Purchasing the land:** The unlawful occupier may be given the opportunity to purchase the land they are unlawfully occupying, effectively legalising their occupation.
- **Entering into a leasing agreement:** The unlawful occupier may enter into a leasing agreement with the council, which would allow them to legally occupy the land for a specified period under certain conditions (maximum 3 years). The annual application fee and annual charge per square meter is

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documented in the annual Budget – Fees and Charges. The offer of a lease agreement will be at the discretion of council.

- **Removal of assets and un-occupying the land:** The unlawful occupier may choose to remove any assets they have on the land and cease their occupation.

These options will be considered on a case-by-case basis and are subject to the approval of the council. In cases where these options are not feasible or if the unlawful occupation continues, the council reserves the right to take further legal action.

Whitehorse City Council will regularly monitor its roads, right of ways, and reserves to prevent unlawful occupations. This includes regular inspections and audits of Council land.

5. Relevant Legislation and Policies

This policy is compliant with, and should be read in conjunction with, the following legislation and policies:

- Local Government Act 1989 (Victoria)
- Local Government Act 2020 (Victoria)
- Road Management Act 2004 (Victoria)
- Planning and Environment Act 1987 (Victoria)
- Subdivision Act 1988 (Victoria)

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Appendix 1 - Process

| Stage | Detail |
|-----------------|---|
| Initiation | An application is submitted by a resident (an abutting property owner), or an internal enquiry is made to determine if the road is suitable for discontinuation and no longer required for public use. |
| Public Use Test | <ul style="list-style-type: none"> the nature and extent of the present and past use of the road. the likelihood of the road being required for ongoing and future use, both vehicle and pedestrian. Section 9 of the <i>Road Management Act 2004</i>; |
| Review | The application is reviewed, and due diligence is undertaken. This includes verifying the ownership of the road and assessing the impact of discontinuation. |
| Consultation | Consultation is conducted with all necessary internal Council departments and Statutory Authorities regarding the sale. This includes gathering information on required easements. |
| Valuation | A market valuation of the land is obtained by a qualified property valuer appointed by the Council. The valuation is based on the current market rates, location, and size of the land. |
| Engagement | The Council engages with abutting property owners to establish their support. This includes sending letters to the property owners, conducting meetings if necessary, and documenting their responses. |
| Offer | Letter of Offer(s) are sent to abutting property owners seeking commitment to purchase. The offer includes the valuation price, terms and conditions of the sale, and a deadline for response. |
| Recommendation | A Council report is tabled recommending discontinuation and sale of the road. The report documents the process undertaken and recommends the commencement of the statutory process. |
| Notice | A Public Notice is given both in The Age newspaper and published on the Council website. A copy of the public notice and explanatory letter are sent to property owners/occupiers of all nearby properties along with other people who may be impacted. |
| Decision | A Council report is tabled documenting any objections or submissions from the public notice. The Council reviews all submissions and the report before deciding. |
| Purchase | An offer to purchase is made to abutting property owners. Deposits are paid as required. |
| Sale | The land is sold to the abutting property owners. |