

# PROCEDURE FOR REGISTERING OR REMOVING A ROAD ON OR FROM THE REGISTER OF PUBLIC ROADS

## Introduction

The City/Shire of *(insert Council name)* is the relevant road authority for maintaining a Register of Public Roads within Council's municipal district.

## Legislation

The *Road Management Act 2004* applies.

## Road registration obligations

The relevant coordinating road authority must register on its register of public roads a road in respect of which the road authority has made a decision that the road is reasonably required for general public use (see section 17(3)).

## Status after registration

The registration of a road on the Register of Public Roads results in the road becoming a "public road" within the meaning of the Act (see section 17(1)(e)).

It imposes a statutory duty on the road authority to inspect, maintain and repair the road to the standard specified in the Road Management Plan (see section 40(1)).

There is no obligation to upgrade a road or to maintain a road to a higher standard to which the road is constructed (see section 40(2)).

## Road removal obligations

A road authority **must** remove a road from its Register of Public Roads if the road authority has made a decision that the road is no longer reasonably required for general public use (see section 17(4)).

## Status after removal

The removal of a road from the Register of Public Roads does not affect –

- the status of the road as a public highway; or

- the right of public use of the public highway

(see section 17(5)).

### **Decision to register or remove**

The decision to register or remove a road can be made by Council as the road authority or by any person appointed by Council to exercise this power authorised by instrument of delegation (see section 118(1)).

### **Definition of ‘required for general public use / no longer required for general public use’**

This term is not defined in the Act.

The decision may sometimes be difficult because the circumstances are unclear or complex.

Courts have struggled with the definition or similar wording.

In the 1995 Victorian Supreme Court decision of *Templestowe Developments Pty Ltd and Ors. v City of Boroondara* (1997) 1VR 504, Ashley J adopted a narrow interpretation of public use when he said at page 522 –

*“Unless the users (of the road) included persons other than (owners of land in the subdivision containing the road and an adjoining subdivision) it probably could not be said that the use was use by the public.”*

By contrast, in the 1960 Australian High Court decision of *Permanent Trustee Co. of NSW v Campbelltown Corporation* (1960) 105 CLR 401, Fullager J said at page 409 –

*“I would say first that I regard it as an artificial and unreal conception that when roads are left in subdivision they are left as private roads merely for the use of those who want to get to land in the subdivision. It seems more realistic to treat such roads as shown as part of the general roadway system and as open to all so that unless access is prevented by fencing or otherwise, roads shown upon a plan of subdivision are properly to be regarded as open to the public, with the consequence that if there is use of such a road as a means of passage by any members of the public, whether owners of land in the subdivision or not, then it is a public road.”*

In the 1992 Victorian Supreme Court decision of *Costante v The Mayor Councillors and Citizens of the City of Preston*, Vincent J said –

*“In considering whether or not a road, within the meaning of section 528(2) (of the since repealed Local Government Act 1958), is reasonably required for public use the Council would primarily be concerned with present and future use. The extent and type of past use would possess relevance as would the availability of alternative means of access, a range of other development and planning considerations.”*

The following factors are relevant for deciding whether a road is no longer reasonably required for general public use –

- **Public access**

Is public access for vehicles and/or pedestrians available, permitted, restricted, discouraged or denied whether practically and/or intentionally?

**Example**

A closed (and locked or unlocked) gate or fence across the road may suggest denial of public use while an open gate or signage (“Keep Out” or “No Entry”) may suggest discouragement only.

- **Frequency of use**

Is there evidence of frequency or infrequency of use?

**Example**

A road which is overgrown with vegetation would suggest abandoned use while a visible walking track or tyre tracks would suggest some or frequent use.

- **Throughway**

Is the road a throughway or is there only one entry point?

**Example**

A throughway would permit traffic to pass through the road and may be evidence of use by persons other than occupiers of or visitors to land adjoining the road.

- **Road surface**

Has the road been formed or constructed so as to facilitate public use?

- **Road Maintenance**

Does Council or did its predecessor maintain the road?

- **Planning controls**

Does the Planning Scheme affect the road or has a planning permit been granted for a development which provides for access over the road to the subject land?

### **Consultation**

Owners and occupiers adjoining the road should be consulted in writing and given the opportunity to respond within a reasonable period.

### **Public notice**

If necessary, because of wider use, a public notice should be placed in a newspaper circulating generally within the municipal district calling for submissions from any persons affected by the proposed registration or removal of the road on or from the Register of Public Roads.

### **Objections**

Any objections received must be carefully considered.

### **Notification of decision**

All owners and occupiers adjoining the road and any other submitters must be notified in writing of the decision and the reasons for the decision.