



NAME OF POLICY: Private Laneways Policy and Procedure

POLICY MANUAL: Governance

BACKGROUND

Within the City of Norwood Payneham & St Peters ('the City'), there are a number of Private Laneways which provide pedestrian and vehicular access to residential properties and businesses, and access routes to adjoining roads and destinations.

The majority of these Private Laneways have no known owner, or remain in the ownership of an individual who is now deceased. This often results from historical land divisions and subsequent reconfiguration of allotments that result in "forgotten" parcels of land. Over time, the only part of the original title that remains is the Private Laneway. This land often remains in the name of the original owner, with the heirs or successors in title not coming forward to take possession of the land. Today, the land comprising Private Laneways in the City often have no assessment number and therefore, are not subject to Council rates, and they may not have a current Certificate of Title.

Some of these Private Laneways have deteriorated over time and require maintenance, and in some cases, upgrading, to ensure that they remain accessible. As the Laneways are privately-owned, the Council has no obligation to repair or upgrade them.

Nevertheless, the Council receives a substantial number of enquiries from residents who utilise these Private Laneways regarding their ownership and requesting maintenance and upkeep to be undertaken.

This Policy provides a framework for the Council to progressively assume ownership of and responsibility for Private Laneways within the City through their conversion to Public Road.

This Policy does not apply to Rights of Way, except in circumstances where a Right of Way adjoins a Private Laneway, in which case a boundary realignment and acquisition of the Right of Way may be proposed in connection with the proposed conversion of the Private Laneway to Public Road.

DISCUSSION

The Council recognises the difficulties that face residents and businesses that rely upon Private Laneways for access to their properties, and acknowledges that the Council is often the only authority which has the capacity to provide a solution.

As such, the Council has determined to progressively assume responsibility for selected Private Laneways within the City through implementing the statutory process set out in Section 210 of the *Local Government Act 1999* (the Act), to convert the Private Laneway to a Public Road, whereby its ownership vests in the Council.

KEY PRINCIPLES

This Policy is based on the following key principles:

- The Council will seek to provide a safe environment and trafficable surface for residents to access their properties.

- A well-connected and accessible Private Laneways network serves a functional purpose, contributes to local amenity and is of benefit to the whole community.
- The Council is committed to establishing transparency and accountability in its processes and procedures, to facilitate equitable consideration and outcomes for resident enquiries.

DEFINITIONS

Act - the *Local Government Act 1999* (SA).

Adjoining Allotment - a rateable property directly adjoining a Private Laneway.

Adjoining Owner - the owner of an Adjoining Allotment.

Public Road - Roads which are owned or vested in the name of the Council (and otherwise in accordance with the definition set out in the Act), and the Council is responsible for the care, control, management and upkeep of the Road.

Private Laneway - a Road which is privately owned (ie not owned by the Council), with the private owner of the Road being responsible for its upkeep.

Road - a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes a bridge, viaduct or subway, or an alley, laneway or walkway.

Rights of Way - are easements which function as a Road – ie they provide one party with the legal right to pass over a specific route on property owned by another party.

POLICY

The Council may, where the Council considers it necessary or appropriate to do so, assume ownership of a Private Laneway.

This will be undertaken in accordance with the process set out in Section 210 of the Act to convert the Private Laneway to a Public Road, and in accordance with the requirements set out in this Policy and Procedure.

The conversion of a Private Laneway to a Public Road by the Council is subject to the following conditions:

- the Council must be unable to identify and find the owner of the Private Laneway (including the heirs or successors of such an owner) after making reasonable enquiries (as the Council considers appropriate);
- the Council will seek to obtain written agreement from a minimum of two thirds (2/3^{rds}) of the Adjoining Owners to the Council's proposal to declare the Private Laneway a Public Road*;
- the costs to convert the Private Laneway to a Public Road (including, but not limited to legal, advertising, and administration costs) will be met in entirety by all Adjoining Owners, and the costs will be shared equally between them or otherwise as agreed to by the Council;
- the Council will declare a Separate Rate over the relevant part of the Council area amounting to a rates liability against each Adjoining Allotment (which may be payable by instalments, and otherwise on the terms and conditions set by the Council), in order to recover the costs of converting the Private Laneway to a Public Road;
- upon the Private Laneway becoming a Public Road, the Council will be responsible for all costs associated with undertaking the required capital upgrade works to the Private Laneway in order to bring it up to Public Road standard (subject to the Council approving this funding in its annual Budget consideration and adoption process).

- At the discretion of the Council, capital upgrade works will not be undertaken by the Council in respect of a Private Laneway until:
 - all of the necessary legislative requirements and administrative arrangements are finalised to ensure that the Private Laneway has been declared as a Public Road and its ownership has been transferred to the Council; and
 - the Separate Rate has been declared over the Adjoining Allotments.
- Upon completion of the capital upgrade works, the Private Laneway (which is now a Public Road) will be incorporated into the Council's Whole-of-Life Model and will be maintained in accordance with the Model.
- The Council will assign a name to the newly created Public Road in accordance with the Council's *Naming of Roads and Public Places Policy*.

It is the Council's objective to select up to two (2) Private Laneways for conversion to Public Road each year, and subsequently, to include the upgrade of up to two (2) Private Laneways within the Council's Annual Capital Works Program in the following financial year.

The selection of a Private Laneway for conversion to Public Road will be undertaken in accordance with the Council's Private Laneways Procedure.

****Note:*** *Section 210 of the Act does not prescribe a minimum level of agreement with respect to the proposed conversion of a Private Laneway to Public Road. Pursuant to the Act, and having followed the required process set out in Section 210 of the Act, the Council can determine to convert a Private Laneway to Public Road at its discretion, without any written agreement from Adjoining Owners, or with a level of agreement that is less than the 2/3rds threshold stated in this Policy.*

PRIVATE LANEWAYS PROCEDURE

The Council's Private Lanes Register contains a list of all Private Lanes identified in the City.

A Private Lanes Priority List has also been developed which ranks all Lanes on the Register in order of priority for conversion to Public Road under this Policy. The Priority List is based upon:

- firstly, a condition assessment of all Lanes (with those Lanes in poor condition having greater priority);
- secondly, a compliance assessment in relation to traffic management, stormwater and planning requirements; and
- thirdly, consideration of the selection criteria set out below.

Despite the creation of the Priority List, a Private Lane may be considered for conversion to Public Road in a given year at the Council's discretion, taking into consideration the selection criteria below.

Selection Criteria

In selecting a Private Lane for conversion to a Public Road, any one or more of the following criteria may be taken into consideration:

- **Public infrastructure** – the extent to which public infrastructure (owned by the Council or other public authorities) is already installed in / over / under the Private Lane. For instance, drainage, kerbing, footpaths, street lighting, water / sewer / electricity services.
- **Condition** – the condition of the Private Lane and any public infrastructure present (including, for example, the condition of the surface / kerbing / footpath, drainage capacity, lighting, vegetation growth, rubbish etc).
- **Usage** – the extent of use by adjacent residential and/or commercial properties, including where the Private Lane provides sole or primary vehicle access to the property from the Public Road network, the extent of use by other road users or pedestrians, and the type of use (including, eg vehicular, pedestrian, service vehicle access, parking).
- **Size and locality** – the total length/width/area of the Lane, the number of Adjacent Allotments, the extent to which the Private Lane is connected to the Public Road network, and the characteristics of the location of the Private Lane (for example, particular environmental factors).
- **Ownership and tenure** – whether the Private Lane is held in private ownership by a single person / entity or multiple persons / entities, including if portions of the Lane are held in separate private or public ownership (for instance, portions of the Lane may comprise part of the title for Adjacent Allotments, or may comprise part of the common property of a strata or community corporation), or if portions of the Lane are subject to other property rights (including, eg, easements, rights of way, land management agreements).
- **Public vs private demand** – the extent to which the Private Lane is reasonably required for public access, balanced with the interest of adjacent property owners in retaining private access. This may include present or anticipated demand for access (including as a result of future anticipated development), as well as (without limitation) amenity, safety, environmental, heritage and cultural considerations.
- **Strategic purpose** – the extent to which the Private Lane has a future strategic purpose for the Council, or presents an opportunity to be activated for public use (including, for example, to provide access to an adjacent Council-owned reserve or facility, or to improve pedestrian connectivity throughout the City).
- **Planning considerations** – any relevant planning or development considerations as identified by the Council;

- **Cost** – the anticipated operating and capital costs (both initial and ongoing) for the Council regarding maintenance and upgrade works, if the Private Laneway was converted to a Public Road and maintained at Public Road standard.
- **Risk to Public Safety** – any risk (whether actual or anticipated) to public safety presented by the condition or usage (or otherwise) of the Private Laneway (including, for example, use by persons engaged in anti-social behaviour, fire risk from vegetation growth, flooding risk etc).
- **Encroachment / Obstruction** – the presence of any encroachment or obstruction over the Private Laneway which prevents access by adjacent landowners or the general public and/or decreases amenity (including, for example, fencing, gates, equipment, vehicles, rubbish and other unauthorised dumping etc).
- **Maintenance requests** – the frequency and / or number of requests received by the Council with respect to access/maintenance/upgrade, etc of the Private Laneway.

The Council's Urban Planning & Environment Department will be consulted prior to selecting a Private Laneway for conversion to Public Road.

Process

It is anticipated that the Public Road conversion process ('Stage 1') will be undertaken over a period of approximately one (1) year in relation to the two (2) Private Laneways selected for conversion to Public Road that year.

The design and construction of the newly created Public Road ('Stage 2') will be undertaken in the following financial year.

Step	Action	Responsibility	Timeframe (approximate)
STAGE 1 – PUBLIC ROAD CONVERSION (Year One)			
1	Undertake research to determine: <ul style="list-style-type: none"> • the current status and ownership of the Private Laneway; and • any person(s) with a registered legal interest over the Private Laneway. 	Council's Lawyers Lands Titles Office of SA	Six (6) months <i>July - December</i>
2a	Write to Adjoining Owners and (where relevant) registered interest-holders of the Private Laneway to give notice of the Council's proposed Public Road declaration. <i>(Note – written agreement is required from at least 75% of Adjoining Owners for the Public Road conversion to proceed under the Council's Private Laneways Policy)</i>	Governance & Community Affairs Department	Allow three (3) months for responses <i>February-April</i>
2b	Publication of the Council's proposed Public Road declaration: <ul style="list-style-type: none"> • in the SA Government Gazette; • on the Council's website; and in a local newspaper.	G&CA Department	Simultaneously with Step 2a
3	Prepare funding submission for next financial year's Budget in relation to:	Urban Services Department G&A Department	<i>February-March</i>

Step	Action	Responsibility	Timeframe (approximate)
	<ul style="list-style-type: none"> • Stage 2 – Design and Construction for current two (2) Private Laneways; and • Stage 1 – Public Road Conversion – for next two (2) Private Laneways. 		
4	<p>Council meeting to consider the proposed Public Road conversion, and any submissions received from registered interest-holders:</p> <ul style="list-style-type: none"> • if 2/3^{rds} of Adjoining Owners agree to the Public Road conversion, the Public Road conversion process can proceed and the Council can declare the Private Laneway as a Public Road; <p><i>(Note – a Council resolution is required to declare the Private Laneway as a Public Road pursuant to Section 208 of the Act, and a name must be assigned to the new Public Road)</i></p> <ul style="list-style-type: none"> • if 2/3^{rds} agreement is not reached, the Public Road conversion process cannot proceed, in accordance with the Council's Private Laneways Policy. 	G&CA Department	<i>June-July</i>
5	<ul style="list-style-type: none"> • Publication of the Council's resolution in the SA Government Gazette. <p><i>(Note – the resolution declaring the Private Laneway to be a Public Road will not take effect until publication in the Gazette pursuant to Section 208(5) of the Act)</i></p> <ul style="list-style-type: none"> • Give notice of the Council's Public Road declaration to the Registrar-General. Registrar-General to issue new Certificates of Title for the Public Roads to the Council. • Advise Urban Services to include the Public Road in the Council's Public Road and Asset Registers. 	G&CA Department	<p>The next available Gazette date</p> <p><i>June-July</i></p>
6	<p>Write to Adjoining Owners of the Private Laneway advising whether 2/3^{rds} agreement to Public Road conversion was obtained and whether the Public Road Conversion process will proceed.</p>	G&CA Department	<i>June-July</i>

Step	Action	Responsibility	Timeframe (approximate)
STAGE 2 – DESIGN & CONSTRUCTION (Year Two)			
1	Annual Budget consideration and adoption by the Council. <i>(Note – if funding is successfully allocated, the capital upgrade works will be included in the Council's Capital Works Annual Program for this financial year)</i>	Council	<i>July</i>
2	Prepare preliminary design for capital upgrade works to Public Road.	Urban Services Department	<i>July-September</i>
3	If Public Road Conversion is proceeding, prepare a report to the Council regarding the proposed declaration of a Separate Rate under Section 154 of the Act over the Adjoining Allotments of the Public Road to recover the costs of Conversion.	G&CA Department Corporate Services Department	<i>August-September</i>
4	Undertake community consultation (including publication of required notices and holding of public meeting), as required by Section 151(5)(e) of the Act regarding the proposed declaration of a Separate Rate.	G&CA Department	Three (3) weeks <i>August-September</i>
5	Prepare a report to the Council regarding community consultation for the proposed Separate Rate. Council to resolve to declare the Separate Rate as part of the next financial year's Budget process (or resolve not to proceed with the proposed declaration).	G&CA Department Corporate Services Department	<i>September-October</i>
6	Review and finalise design for capital upgrade works to Public Road.	Urban Services Department	<i>October-November</i>
7	Procurement of contractor to undertake capital upgrade works to Public Road.	Urban Services Department	<i>December-January</i>
8	Undertake the capital works to upgrade the new Public Road to Public Road standard.	Urban Services Department	<i>February-June</i>
9	Upon completion of the capital works, incorporate the Public Road into the Council's Asset Management database.	Urban Services Department	<i>July</i>
10	Declaration of Separate Rate over Adjoining Allotments of the Public Road as part of the Annual Budget process.	Corporate Services Department	<i>July</i>

REVIEW PROCESS

This Policy and Procedure will be reviewed every three (3) years.

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is Council's Manager, Governance, Legal & Property, telephone 8366 4507.

ADOPTION OF THE POLICY

This Policy was adopted by the Council on 6 June 2016.

This Policy and Procedure was reviewed and adopted by the Council on 4 March 2019.

This Policy and Procedure was reviewed and adopted by the Council on 7 September 2020.

TO BE REVIEWED

2023