



Banyule
CITY COUNCIL

BANYULE RIGHTS OF WAY POLICY

Schedule

Date	Review No.	Review
September 2012	1	Reviewed by Michelle Herbert following discussions with Property Coordinator
December 2012	2	Reviewed by Michelle Herbert
April 2013	3	Reviewed by Michelle Herbert following DK restructuring
April 2014	4	Reviewed and edited by David Bailey

1. INTRODUCTION

1.1. Purpose

The purpose of the Banyule Rights of Way Policy (the Policy) is to clarify Council's role with respect to, and facilitate the co-ordinated management of Rights of Way within the City of Banyule.

1.2. Objective of the Policy

The overall objective of the Policy is to establish clear direction for dealing with the identified key issues associated with Rights of Way, having regard to legislative requirements and existing Council policies, strategies and guidelines.

1.3. Application of the Policy

This Policy applies to all Rights of Way within the City of Banyule. The Policy will be implemented in accordance with the Banyule Rights of Way Strategy 2014 – 2024.

1.4. Policy Context

This Policy does not replace Council's responsibilities under State legislation, but should be read in conjunction with the legislation and existing Council policies, strategies and guidelines.

The Policy responds to community expectations associated with Council's management role in respect to Rights of Way.

This Policy has been prepared in accordance with Council's City Plan 2013 – 2017 which includes our five key objectives:

People - Community Strengthening and Support
Planet - Environmental Sustainability
Place - Sustainable Amenity and Built Environment
Participation - Community Involvement in Community Life
Performance - Use our Resources Wisely

Council is the custodial manager of Rights of Way but is rarely the registered owner. Notwithstanding that Council may not be registered as the owner, this custodial managerial role confers on Council legal and regulatory responsibilities, and customer expectations. Section 205 of the Local Government Act 1989 and Section 40 of the Road Management Act 2004 confer these responsibilities on Council.

1.5. Key Issues

The key issues in the management of Rights of Way are categorised as follows:

Identification

- *Identification and categorisation of Rights of Way*
- *Numbering and naming of Rights of Way*

Clarification

- *Heritage*
- *Illegal occupancy and encroachment*

Maintenance

- *Maintenance, cleansing and infrastructure*
- *Drainage infrastructure and stormwater overland flow paths*

Improvement

- *Construction of unconstructed Rights of Way*
- *Activation of Rights of Way within Activity Centres*
- *Rights of Way abutting existing or new Development*
- *Transport, parking and loading in Rights of Way*

Closure

- *Temporary or Permanent Closure*
- *Discontinuance*

1.6. Definitions

In the context of this policy the following definitions apply:

Activity Centre	means the areas identified as Activity Centres within the Banyule Planning Scheme.
closure	means thoroughfare access to the road by vehicles is prohibited.
Council	means Banyule City Council.
discontinuance	means the removal of the 'road' status and extinguishment of carriageway easement rights.
Drainage Policy	means the Drainage Policy defining division of responsibilities and management of drainage within the municipality adopted by Council in March 1998

Resultant Land	means the land from former Rights of Way or roads on completion of the requisite statutory procedures to discontinue.
Rights of Way	means those numbered and named in Banyule City Council's Road Register (as amended from time to time).
road	means any road, street, Rights of Way, laneway, unused road, passage, cul de sac, by-pass, bridge or ford, footpath, bicycle path or nature strip and any culvert, kerbing or other land or works forming part of a road.
Road Management Plan	means the Banyule City Council Road Management Plan adopted by Council on 17th June 2013.
Road Register	means the Register of Public Roads kept and maintained by Council in accordance with Section 19 of the Road Management Act.
Special Rate/ Charge Scheme	means a special rate or special charge scheme declared by Council pursuant to Section 163 of the Local Government Act 1989.
Service Authority	means any provider of public utility services, whether statutory or not and any other public person or instrumentality having rights or responsibilities over Rights of Way.
unconstructed Rights of Way	means Rights of Way on which no physical surface works have been carried out by Council or Service Authorities.
unused road	means no evidence of current vehicular or pedestrian usage from which an opinion could be formed that the road is required as a road for public use.

2. VISION, PRINCIPLES and OBJECTIVES

2.1. Vision

The vision for the Policy is:

To provide well-managed, safe and accessible Rights of Way throughout the City of Banyule that enhance the local and wider community wellbeing, while maintaining and creating new opportunities for pedestrians, cyclists, public safety and community amenity.

2.2. Principles

The Policy has been formulated on the following set of principles:

Sustainability

Balancing the current and future needs of the community, the environment and the economy to provide quality of life for today and tomorrow's communities.

Effective, Coordinated and Efficient Movement

Balancing the efficiency of Rights of Way across the City of Banyule to optimise capacity, maximise use of resources and facilitate integrated travel. Understanding transport users' needs and improving our Rights of Way to address those needs.

Choice and Diversity

Encouraging and providing for choice and diversity in lifestyle, culture, transport and environment.

Stakeholder Engagement and Community Participation

Taking into account the interests of Rights of Way users and members of local communities through appropriate engagement.

Financial Responsibility and Resource Efficiency

Guiding Council investment, spending, maintenance and natural resource use in an efficient, equitable and sustainable manner.

Integrated Decision Making

Achieving objectives through coordination across all departments and external stakeholders.

2.3. Objectives

The objectives to ensure the efficient management of Rights of Way are:

Identification

- *To maintain an up-to-date accurate and detailed database of all Rights of Way in the City of Banyule.*
- *To establish a classification criterion for all Rights of Way having regard to the Road Management Plan.*

Clarification

- *To prioritise the use and management of all Rights of Way according to their public need.*
- *To ensure existing or proposed new Rights of Way meet Council standards when a new development is proposed with its primary access off Rights of Way.*
- *To maintain Rights of Way free from illegal occupancy and encroachment.*
- *To preserve the heritage value of Rights of Way that have a heritage element (including bluestone) or that are located in areas affected by a Heritage Overlay control in the Banyule Planning Scheme.*
- *To ensure landowners and developers contribute financially to the capital cost of upgrading and lighting Rights of Way, through special charge schemes.*

Maintenance

- *To define Council's management practices and responsibilities in relation to maintenance of Rights of Way having regard to the Road Management Plan.*
- *To ensure that Rights of Way required for public use are accessible, safe and appropriately constructed and maintained, subject to budgetary constraints.*
- *To preserve the stormwater overland flow path function of Rights of Way in known flood zones.*
- *To protect public utilities and other service assets and enable their orderly provision and coordination for the benefit of the community.*
- *To provide for effective transport and land integration use within Rights of Way.*

Improvement

- *To improve, where appropriate, Rights of Way that have potential for greater public use, subject to budgetary constraints.*
- *To enhance transport safety and accessibility of Rights of Way.*
- *To enhance public safety, lighting and drainage along and within Rights of Way.*

- *To activate and (where necessary) increase the width of Rights of Way particularly within Activity Centres.*
- *To ensure Rights of Way are enhanced by proposed development directly abutting those Rights of Way.*
- *To contribute to the preservation of existing streetscapes.*
- *To fund a ten year Rights of Way program using Capital Works and Development Contributions.*

Closure

- *To ensure suitable consultation prior to the temporary or permanent, partial or full closure or discontinuance of Rights of Way.*
- *To discontinue and sell off Rights of Way no longer reasonably required for public access (Class 2 Rights of Way).*

3. POLICY PROVISIONS

3.1. Introduction

This Policy is designed to produce a coordinated approach to the management of Rights of Way.

In managing Rights of Way, Council will have regard to:

- *Legislative requirements and Council policies, strategies and guidelines; and*
- *Existing and future community and other stakeholders' interests, needs and/or requirements.*

The interrelated nature of the Key Issues identified in Section 1.5 suggests that they be dealt with in a holistic manner. However, to capture the distinct characteristics and meet the specific statutory requirements related to the issues, clear definitions are provided for each Key Issue together with Council's actions to address the issue.

3.2. Identification

3.2.1. Identification and categorisation of Rights of Way

Purpose

To define Council's responsibility in identifying and classifying Rights of Way having regard to the Road Management Plan.

Council Policy

- Council will maintain a comprehensive database of all Rights of Way.
- Council will maintain classification criterion for its Rights of Ways, having regard to the Road Management Plan.

3.2.2. Numbering and Naming Rights of Way

Purpose

To define Council's role in the naming of 'unnamed' Rights of Way.

Council Policy

- Council will establish and maintain clear guidelines and procedures for dealing with requests for naming Rights of Way with reference to Council's Street Numbering and Naming Guidelines.

3.3. Clarification

3.3.1. Heritage

Purpose

To define Council's role in managing heritage issues relating to Rights of Way affected by a Heritage Overlay in the Banyule Planning Scheme or heritage elements including, but not limited to, bluestone.

Council Policy

- Council will establish a Rights of Way Heritage Management Plan which identifies appropriate maintenance and service standards for Rights of Way affected by a Heritage Overlay or containing heritage elements.
- Council will implement maintenance and service standards in accordance with the Rights of Way Heritage Management Plan, subject to budgetary constraints.

3.3.2. Illegal occupancy and encroachment

Purpose

To define Council's role in facilitating the removal of illegal occupancy and encroachments (including fencing and gates) on Rights of Way in the City of Banyule.

Council Policy

- Council will establish and maintain clear guidelines and procedures for investigating and facilitating the removal of illegal occupancy and encroachments on Rights of Way in the City of Banyule to protect the amenity and/or character of the surrounding area.

3.4. Maintenance

3.4.1. Maintenance, cleansing and infrastructure

Purpose

To define Council's Rights of Way maintenance responsibility.

Council Policy

- Council will establish clear guidelines and procedures for dealing with requests for maintenance and cleansing of Rights of Way.
- Council will implement maintenance and service standards for Rights of Way in accordance with the Road Management Plan.

3.4.2. Drainage

Purpose

To define Council's responsibility for drainage and legal point of discharge within Rights of Way, particularly where no formal drainage system exists.

Council Policy

- Council will implement maintenance and service standards for drainage within Rights of Way in accordance with the Road Management Plan and Drainage Policy.
- Council will address drainage issues that cause damage to properties and compromise public safety in accordance with the Drainage Policy.
- Council will protect the legal point of discharge in Rights of Way by ensuring that all drainage matters are resolved prior to the sale of discontinued Rights of Way.
- Council will identify and maintain Rights of Way that function as important overland flow paths for stormwater.
- Where no formal drainage system exists or existing systems are inadequate or inappropriate, a Special Rate/Charge Scheme will be implemented and funded in accordance with the Drainage Policy.

3.5. Improvement

3.5.1. Construction of Unconstructed Rights of Way

Purpose

To define Council's role in facilitating the construction of Rights of Way which are required for road purposes by abutting owners or the general public.

Council Policy

- Council will develop maintenance and service standards for unconstructed Rights of Way in accordance with the Road Management Plan.
- Unconstructed Rights of Way identified as being required for road purposes will be prioritised for construction. Implementation and funding will be through a Special Rate/Charge Scheme and subject to budgetary constraints.

3.5.2. Activation of Rights of Way within Activity Centres

Purpose

To define and facilitate Council's role in managing the activation of Rights of Way within or close to Activity Centres.

Council Policy

- Council will develop an appropriate database of all Rights of Way within Activity Centres and identify whether they are suitable for activation.
- Council will actively encourage development and promote the use of suitable Rights of Way within, and close to, Activity Centres for a wide variety of different uses, subject to all maintenance and safety standards being met.

3.5.3. Rights of Way abutting existing or new development

Purpose

To define Council's role in managing existing or new Rights of Way where proposed development faces and/or abuts Rights of Way or where all or part of the development has either its primary or secondary access from Rights of Way.

Council Policy

- Council will establish guidelines for Rights of Way where a proposed or existing development faces and/or abuts Rights of Way and it is proposed that the Rights of Way is to be used as the primary or secondary access.
- New or additional Rights of Way, proposed by developers will be subject to strict Council guidelines and standards and Council ownership will only be considered where it is in the broader public interest.
- Developers must fully fund the capital cost of constructing, upgrading, draining and lighting new and additional Rights of Way abutting their development or where Rights of Way are to be used as the primary or secondary access.

3.5.4. Transport, parking and loading in Rights of Way

Purpose

To define Council's role in managing all transport modes (including cyclists and pedestrians) accessing Rights of Way.

Council Policy

- Any unconstructed road identified as being required for sustainable transport purposes will be prioritised for construction through a Special Rate/Charge Scheme.
- Council will encourage and give preference to active transport modes in Rights of Way particularly close to Activity Centres.
- Council will manage Rights of Way to achieve transport integration, choice and balance for all users.

3.6. Closure

3.6.1. Temporary and Permanent Closure

Purpose

To define Council's role in implementing traffic management measures to effect the closure of Rights of Way.

Council Policy

- Council will develop guidelines for the temporary or permanent closure of Rights of Way including transparent consultation with the community, public authorities and other stakeholders, assessing the impact on the amenity or character of surrounding areas and the function of Rights of Way as an important overland flow path for stormwater.

3.6.2. Discontinuance

Purpose

To define Council's role in facilitating the discontinuance and sale of Rights of Way which are no longer required as a road by abutting owners or the general public.

Council Policy

- Council will develop clear guidelines and procedures for dealing with requests for the discontinuance of Rights of Way and the sale of the resultant land.
- Council will not support the discontinuance of Rights of Way and sale of the resultant land where a 'landlock' situation would be created or where Rights of Way function as an overland stormwater flow path.

4. IMPLEMENTATION

4.1. Policy Implementation

This Policy articulates a long term vision for the management of Rights of Way within the City of Banyule. The implementation of this Policy will be through the Banyule Rights of Way Strategy 2014 – 2024 which includes action plans for the range of issues identified.

4.2. Human Rights Charter

In accordance with Section 28 of the Charter of Human Rights, this Policy has been assessed as being compatible with the human rights protected by the charter. This assessment is based on a Statement of Compatibility of the Human Rights protected by the Charter that are relevant to this Policy.

4.3. References

In consideration or implementation of this Policy reference should be made to the following documents and any revisions or updates:

City Plan 2013 - 2017	Banyule Public Open Space Strategy 2007 – 2012
Banyule Access and Inclusion Policy	Banyule Road Management Plan
Banyule Activity Centre Parking Policy and Strategy	Banyule Road Register
Banyule Activity Centre Structure Plans	Banyule Safer Design Guidelines
Banyule Drainage Policy 1998	Banyule Street Numbering and Naming Guidelines
Banyule Environment Strategy, 2003	Building Act 1993
Banyule Integrated Transport Strategy, 2003	Emergency Management Act 1986
Banyule Local Law No. 1 (2005) General Local Law	Fences Act 1968
Banyule Municipal Strategic Statement	Geographic Place Names Act 1998
Banyule Neighbourhood Character Strategy	Local Government Act 1989
Banyule Planning Scheme	Planning and Environment Act 1987
	Road Management Act 2004
	Victorian Building Regulations