



CITY OF  
MITCHAM

MITCHAM

## **UNAUTHORISED USE OF COUNCIL LAND**

*Adopted by Council 10 May 2016*

public

## TABLE OF CONTENTS

1.	PREAMBLE .....	3
2.	PURPOSE .....	3
3.	SCOPE .....	3
4.	DEFINITIONS .....	3
5.	PRINCIPLES .....	3
6.	POLICY STATEMENT .....	4
	6.1.Management of Existing Instances of Unauthorised Use of Council Land .....	4
	6.1.1 Issue of a Lease .....	4
	6.1.2 Exclusive Occupation of Community Land, Drainage & Road Reserves... ..	4
	6.1.2(a) Community Land and Drainage Reserves.....	4
	6.1.2.(b) Road Reserve.....	4
	6.1.3 Sale of Land.....	5
	6.1.4 Enforcement.....	5
	6.2 Management of Future Instances of Unauthorised Use of Council Land.....	5
7.	POLICY REVIEW .....	5
8.	VERSION HISTORY.....	5
9.	DOCUMENT CONTROL .....	6

## 1. PREAMBLE

The unauthorised use of Council land within the City of Mitcham is a continuing problem. The inclusion of Council owned land by adjoining owners without Council approval, poses a substantial risk to Council in terms of legal liability and risk to public safety. It also alienates land from public access and use and impedes management of the land by Council (including fire management).

## 2. PURPOSE

This policy provides guidelines for the resolution of existing instances of unauthorised use of Council land.

This policy also provides guidelines for dealing with any future instances of unauthorised use of Council land, which occur on or after adoption of this policy by Council.

## 3. SCOPE

The policy applies to all land owned by or under the care, control and management of Council.

The policy does not apply to permits issued for alteration of a road pursuant to Sections 221 and 222 of the *Local Government Act 1999 (as amended)*.

## 4. DEFINITIONS

### *Council Land*

- Includes “local government land” and “public roads” as defined in the *Local Government Act 1999 (as amended)*.

### *Unauthorised Use Of Council Land Or Road Reserve*

- The systematic, periodic or continuing use of land owned by or under the care, control and management of the Council, by another party, to the exclusion of other members of the community, without any formal approval from, or agreement with the Council for that use.

## 5. PRINCIPLES

- Council has a responsibility under the community land provisions of the *Local Government Act 1999 (as amended)* to ensure that community land under its ownership or care, control and management is set aside and managed in accordance with the adopted Management Plans, for the benefit of the community. Also, any land dedicated for a particular purpose is used in a way that is consistent with the dedication. Furthermore, a person is prohibited under the *Local Government Act 1999 (as amended)* and Council By-Laws from using community land for a business purposes unless this use has been approved by Council.
- Similarly, Council has a responsibility to ensure that operational land under its ownership or care, control and management is used for its intended purpose.
- Council also has responsibility to ensure that public roads are kept clear and safe for use by the public.

- 5.4 The policy gives regard to relevant legislation, principles of natural justice and procedural fairness, community values and Council's resource capacity.

## 6. POLICY STATEMENT

- 6.1 **Management of instances of unauthorised use, existing prior to adoption of this policy.**

To effectively manage instances of unauthorised use of Council land by adjoining property owners, which were in existence prior to adoption of this policy by Council, Council may, after careful consideration of the circumstances of each case, implement one of the following options:

6.1.1 Issue of a Lease

Issue a lease (as required under the *Local Government Act 1999 (as amended)*) for a term of up to 5 years where Council determines on balance, that the status quo should remain, provided it is appropriately compensated and that the Lease is subject to conditions that minimise the risk to Council.

6.1.2 Exclusive Occupation of Community Land, Drainage Reserves and Road Reserve

6.1.2(a) Community Land and Drainage Reserves

In cases where the Community Land Management Plan enables the issue of a Lease to allow occupation of community land and drainage reserve by residents, Council can offer the adjoining property owner a lease for a term of up to 5 years. The lease will be issued subject to conditions which allow for the lease to be cancelled, should the land be required by Council for community, drainage or operational use, or alternatively, if the land (owned by the Crown or another Government Department and under the care, control and management of Council) is to be returned to Crown or Government ownership.

6.1.2(b) Council Road Reserve

In instances where Council is willing to grant occupation of an area of Council owned road reserve (by way of a Lease or disposal) to an adjoining property owner, who has enclosed the area of road reserve to the exclusion of all others, Council must first make a road process order to close the subject portion of road pursuant to the *Roads (Opening and Closing) Act 1991*.

In cases where the adjoining property owner wishes to pursue this option, the cost of making the road process order to close the road and all associated surveys and documentation (irrespective of whether the road process order proceeds to completion or not), will be payable by the adjoining property owner.

Upon the issue of a lease for use of Community land, a Council road or drainage reserve, the land will be rated in accordance with the *Local Government Act 1999 (as amended)*.

#### 6.1.3. Sale of Land

Where it is determined that the land on which the unauthorised use of Council land is situated or occurs and it is not required by Council, the option to dispose of the land to the adjoining owner is available. The land must be sold at or above market value, with all costs of disposal being borne by the purchaser.

Sale of the land is subject to compliance with all relevant legislation and Council's "Disposal of Assets" policy.

#### 6.1.4. Enforcement

Council may, following a resolution of Full Council, request that the land on which the unauthorised use is occurring be returned to Council in a condition which is fit for its intended use. Enforcement of a return of the land to its intended use may require the unauthorised party, in reasonable time and at their cost, to remove any structures and to reinstate the land to its original condition.

Enforcement of the return of land to Council must be subject to compliance with all relevant legislation.

### 6.2 **Management of instances of unauthorised use, initiated on or after adoption of this policy.**

Property owners who have begun making use of Council land without authorisation, on or after the date of acceptance of this policy by Council, will be instructed to vacate the land in reasonable time and at their cost, and to reinstate the land to its original condition.

In cases where it is anticipated that Council will be responsible for funding removal of improvements without reimbursement of these costs from the current property owners, a resolution of Full Council is required, prior to instructing the property owners to vacate the land.

Enforcement of the return of land to Council must be subject to compliance with all relevant legislation.

## 7 **POLICY REVIEW**

This Policy will be subject to review every four (4) years or sooner at the discretion of the relevant General Manager.

The CEO has delegated authority to endorse any amendments to the Policy that do not vary the intent of the policy.

## 8 VERSION HISTORY

VERSION	AUTHOR(S) POSITION	CHANGES	DATE
1	Property Planner	New Policy	24 July 2012
2	Governance Officer	Administrative changes only for publication of new policy	24 July 2012
3	Project Officer, Council Land	Defines options for Council to deal with unauthorised use of Council owned land. Includes retrospective application to unauthorised use identified prior to this policy update. Removes instances falling under Sections 221 & 222 of Local Government Act 1999 Includes options to retain land for future use or reinstatement of boundaries.	10 May 2016
5	Governance Officer	Refer to Full Council Resolution 12 November 2019 Item 9.4	12 November 2019

## 9 DOCUMENT CONTROL

<b>Responsible Department</b>	Property and Contracts
<b>Delegations Apply</b>	Yes
<b>Classification</b>	Property Management
<b>Applicable legislation</b>	Local Government Act 1999 (as amended) Encroachment Act 1944 Real Property Act 1886 Crown Land Management Act 2009 Development Act 1993
<b>Related Policies &amp; Corporate Documents</b>	Community Land Register Community Land Management Plans Other Management / Maintenance Plans e.g.: CC Hood, Springfield Management Plan 14.07 Footpaths – Minor Encroachments 16.01 Developments on Council Land 16.14 Open Space Acquisition Development & Disposal 16.19 Disposal/ Change of Use of Non Community Land – Public Consultation 16.31 Sale of Road/Reserves 18:03 Disposal of Assets By Law 3 Use of Local Government Land By Law 4 Roads Unauthorised Use of Council Land Register
<b>Additional references</b>	

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