

ROADS

**PRESENTED AT THE INSTITUTE OF SURVEYORS VICTORIA
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ROADS

We will discuss:

- **What is a Road**
- **Road discontinuances**
- **Whether a road always remains a road once declared**
- **Recent case law on roads**
- **What a client should do if the Council is proposing a discontinuance**

WHAT IS A ROAD?

- Common law principles and roads
- “The term public highway means all public rights of way, including those rights of way that may be described colloquially as roads.” *Anderson v City of Stonnington & Anor*
- It is the public right to use the land as a way, rather than its physical nature, that makes land a highway. At common law a highway was created when a competent landowner manifested an intention to dedicate land as a public road, and there was an acceptance by the public of the proffered dedication. *Permanent Trustee Co of NSW Ltd v Campbelltown Municipal Council*

WHAT IS A ROAD?

- **Common law principles and roads**
- **In order to become a road at common law there must be:**
 - *Dedication to the public by a landowner (which can be presumed)*
 - *Acceptance by the public (i.e. use by the public)*
 - *Without force, without secrecy and without permission*

WHAT IS A ROAD?

- **Section 3 (1) of the Local Government Act 1989 states that a road includes:**
 - A street
 - Right of way
 - A public road under the Road Management Act 2004
 - A passage
 - A cul de sac
 - A by-pass
 - A bridge or ford
 - A footpath, bicycle path or nature strip
 - Any culvert or kerbing or other land or works forming part of the road

HOW ARE ROADS MADE?

- **Roads are created in several ways:**
 - As a requirement for planning approval in a subdivision
 - Declaration on public register of roads by Council or Vicroads pursuant to Road Management Act 2004 (Vic)
 - Introduction of a planning overlay reserving the land for a public purpose under the Planning and Environment Act 1987 and then ultimately compulsory acquisition by a relevant Authority (Vicroads, council, statutory authority (i.e. Linking Melbourne Authority) under the Land Acquisition and Compensation Act 1986

WHO HAS TITLE REGISTRATION TO A ROAD?

- When a subdivision occurs, roads are created and the lots are sold and the title registration to the land comprising the roads usually remains in the original subdivider's name.
- If the road is then put on the public register of roads the title registration will not change.
- The road title will only change in the following circumstances:
 - If the Authority compulsory acquires the land (which if road is already declared on the public register is unlikely)
 - If the Authority discontinues the road and transfers the road into its own name via a transfer of land
 - Pursuant to an adverse possession claim

HOW DO YOU FIND OUT IF LAND IS A ROAD?

- **Check the public register of roads held by the relevant Council and VicRoads**
- **Check the title for a 'road' or 'row' notation**
- **Check the title for a carriage way easement**
- **Careful of 'any easements' notations and look back at parent titles**

HOW DO YOU FIND OUT IF LAND IS A ROAD?

- **Public Registers of Councils differ from council to council
some are in table form and some in map form**

REGISTER OF PUBLIC ROADS 2013

Asset Number	GIS Ref ID	Road Name	Asset Description	Road Classification	Responsibility	RMP	Date Became Public Road	Date Ceased Public Road
17895	4660,1	ABBOTSFORD AVENUE, MALVERN EAST, 3145	ABBOTSFORD AVENUE, CHADSTONE ROAD TO QUENTIN ROAD	COLLECTOR	COUNCIL	Yes	1/07/2004	
17896	4660,2	ABBOTSFORD AVENUE, MALVERN EAST, 3145	ABBOTSFORD AVENUE, QUENTIN ROAD TO REBECCA ROAD	COLLECTOR	COUNCIL	Yes	1/07/2004	
17897	4660,3	ABBOTSFORD AVENUE, MALVERN EAST, 3145	ABBOTSFORD AVENUE, REBECCA ROAD TO IVANHOE GROVE	COLLECTOR	COUNCIL	Yes	1/07/2004	
18616	8335,1	A'BECKETT STREET	A'BECKETT STREET, LANE 9899 TO CHANGE OF WIDTH	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18617	8335,2	A'BECKETT STREET, PRAHRAN, 3181	A'BECKETT STREET, CHANGE OF WIDTH TO CHANGE OF WIDTH	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18618	8335,3	A'BECKETT STREET, PRAHRAN, 3181	A'BECKETT STREET, CHANGE OF WIDTH TO MALVERN ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18619	8350,1	ABERDEEN ROAD, PRAHRAN, 3181	ABERDEEN ROAD, WILLIAMS ROAD TO JOYCE STREET	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18620	8350,2	ABERDEEN ROAD, PRAHRAN, 3181	ABERDEEN ROAD, JOYCE STREET TO NO THROUGH ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
16886	1355,1	ACRE PLACE, MALVERN, 3144	ACRE PLACE, MALVERN ROAD TO MOUNTVIEW ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
16894	1400,1	ADELAIDE STREET, ARMADALE, 3143	ADELAIDE STREET, MYAMYN STREET TO BELL STREET	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
16895	1400,2	ADELAIDE STREET, ARMADALE, 3143	ADELAIDE STREET, BELL STREET TO MALVERN ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18648	8450,1	AFFLECK STREET, SOUTH YARRA, 3141	AFFLECK STREET, COMMERCIAL ROAD TO MOFFAT STREET (LEFT)	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
19010	4185,1	AILSA AVENUE, MALVERN EAST, 3145	AILSA AVENUE, DARLING ROAD TO MALVERN ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
16968	1845,1	AINTREE ROAD, GLEN IRIS, 3146	AINTREE ROAD, HIGH STREET TO LANE 11121	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
16969	1845,2	AINTREE ROAD, GLEN IRIS, 3146	AINTREE ROAD, LANE 11121 TO MALVERN ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18380	7515,1	AIRIE AVENUE, PRAHRAN, 3181	AIRIE AVENUE, HIGH STREET TO KELVIN GROVE	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18381	7515,2	AIRIE AVENUE, PRAHRAN, 3181	AIRIE AVENUE, KELVIN GROVE TO NO THROUGH ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18217	6895,1	ALBANY ROAD, TOORAK, 3142	ALBANY ROAD, IRVING ROAD TO MYOORA ROAD	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
18218	6895,2	ALBANY ROAD, TOORAK, 3142	ALBANY ROAD, MYOORA ROAD TO KOORYONG ROAD	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
18219	6895,3	ALBANY ROAD, TOORAK, 3142	ALBANY ROAD, KOORYONG ROAD TO YARRORONG ROAD	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
18220	6895,4	ALBANY ROAD, TOORAK, 3142	ALBANY ROAD, YARRORONG ROAD TO LINLITHGOW ROAD	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
18221	6895,5	ALBANY ROAD, TOORAK, 3142	ALBANY ROAD, LINLITHGOW ROAD TO STONNINGTON PLACE	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
18222	6895,6	ALBANY ROAD, TOORAK, 3142	ALBANY ROAD, STONNINGTON PLACE TO MALVERN ROAD	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
17738	4155,1	ALBERT STREET, MALVERN EAST, 3145	ALBERT STREET, WAVERLEY ROAD TO OLIVE STREET	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
17739	4155,2	ALBERT STREET, MALVERN EAST, 3145	ALBERT STREET, OLIVE STREET TO MALVERN ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18376	7500,1	ALBERT STREET, WINDSOR, 3181	ALBERT STREET, PUNT ROAD TO UPTON ROAD (LEFT)	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18377	7500,2	ALBERT STREET, WINDSOR, 3181	ALBERT STREET, UPTON ROAD TO PEEL STREET	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18651	8465,1	ALBION STREET, SOUTH YARRA, 3141	ALBION STREET, PUNT ROAD TO MOORE STREET	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18652	8465,2	ALBION STREET, SOUTH YARRA, 3141	ALBION STREET, MOORE STREET TO NO THROUGH ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
17840	4495,1	ALCALA AVENUE, MALVERN EAST, 3145	ALCALA AVENUE, WAVERLEY ROAD TO NO THROUGH ROAD	LOCAL ROAD	COUNCIL	Yes	1/07/2004	
18227	6920,11	ALEXANDRA AVENUE, SOUTH YARRA, 3141	ALEXANDRA AVENUE, WILLIAMS ROAD TO WILLIAMS ROAD NTH	COUNCIL ARTERIAL	COUNCIL	Yes	1/07/2004	
18661	8495,1	ALEXANDRA STREET, SOUTH YARRA, 3141	ALEXANDRA STREET, PUNT ROAD TO CAROLINE STREET STH	LOCAL ROAD	COUNCIL	Yes	1/07/2004	

- City of Monash



HOW ARE ROADS DISCONTINUED? *PLANNING AND ENVIRONMENT ACT (1987)*

- **Section 44. Amendment to a Planning Scheme**

HOW ARE ROADS DISCONTINUED?

LOCAL GOVERNMENT ACT (1989)

- Council can discontinue and sell a road where Council forms the opinion that it is not 'reasonably required for public use'.
- Policies differ from council to council. City of Casey, for example, state:
- Not available or required for general public use if access is legitimately denied (by Council or lawfully by another person or authority), as indicated on signage, a barrier to pedestrians and vehicles (i.e. by a fence or gate).

HOW ARE ROADS DISCONTINUED?

LOCAL GOVERNMENT ACT (1989)

- In other cases, it is required for public use if:
- There is evidence that the road is used (frequently or infrequently) for vehicles, cycling, equestrian or pedestrian access and the road links an existing road with public land or another public road; or
- A planning permit provides for current public access over the road to the subject land; or
- The road serves two or more unrelated properties that do not have direct access from an alternative public road (unless the road was not constructed or maintained by council and is used for private access only)

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

- Most councils will obtain a survey and divide the old laneway into lots which are then offered to adjoining neighbours
- Councils will have a standard Discontinuance and Sale Policy
- The power to discontinue and sell land is derived under Section 206, Clause 3 of Schedule 10 and section 223 of the LGA

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

- If the road was on the public register of roads, Council will need to remove the road from the public register of roads before seeking to discontinue it. This can usually be done by a resolution of council or through delegated authority of the CEO.

HOW ARE ROADS DISCONTINUED?

LOCAL GOVERNMENT ACT (1989)

- Councils will generally offer the land to be discontinued to adjoining property owners (who have usually fully enclosed the land within their property). Owners will need to pay:
- Market Value of the land as determined by the Council's valuer. Some discount this by 50% if the owner can prove 15 years possession. If 30 years occupation can be proven some councils will cap the amount to around \$9,000
- The Council's legal costs
- Costs of registering the transfer, payment of stamp duty and costs of consolidation of title of the transferred land into their title.

HOW ARE ROADS DISCONTINUED?

LOCAL GOVERNMENT ACT (1989)

- Councils will generally only proceed with discontinuance if they have sufficient adjoining owners to agree to pay for the land and it seems that the discontinuance process will not be controversial.
- This usually involves Council contacting land owners and seeking a commitment from them that they want to purchase the land at value as per the Council policy
- Owners are usually required to pay an initial deposit and sign a letter confirming the arrangement.

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

Section 82A requires Council to publish on their internet website any public notice required to be given by the Council stating:

- **specifying the matter in respect of which the right to make a submission applies;**
- **containing the prescribed details in respect of that matter;**
- **specifying the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published;**
- **stating that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission,**

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

Section 223 of the LGA sets out the procedure for dealing with submissions

-Must give public notice

‘public notice’ means a notice in a local newspaper circulating in the area

Will usually be a duplication of the notice published on their website



City of
Whittlesea

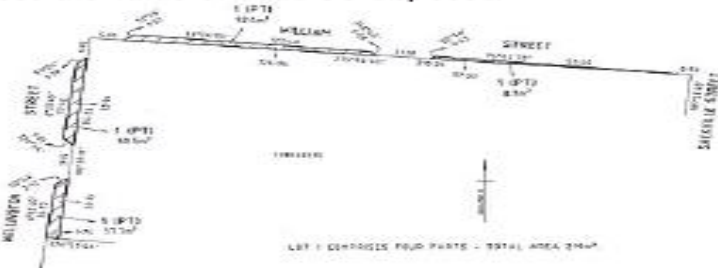
WHITTLESEA CITY COUNCIL

Notice of Intention to Discontinue Roads

Notice is hereby given in accordance with Section 206 and Schedule 10(3) of the Local Government Act 1989 to commence procedures for the discontinuance of four sections of road reserve adjoining 60 Sackville Street Mernda, marked 'hatched' in the plan below.

The discontinuance and transfer of the sections of road to the adjoining landowner, will remove any inconsistencies in the present road widths for Sackville, William and Regent Streets, Mernda, and ensure that a desired 20.6m road width is achieved under the Mernda West Development Plan.

Council, in return, will receive three sections of land (being 96m² in total) from the adjoining landowner, to offset the value of road be disposed.



Any person affected by the road discontinuance may make a written submission addressed to the Chief Executive Officer, City of Whittlesea, Locked Bag 1, Bundoora, MDC, 3083. A copy of the public submission form can be downloaded via the Public Notices tab of Council's website (<http://www.whittlesea.vic.gov.au/>) or collected from Council Offices located at 25 Ferres Boulevard South Morang.

Council will consider submissions received by 12 noon on Wednesday 25 January 2017.

Any person who has made a written submission to the Council and requested that he or she be heard in support of the written submission is entitled to appear in person or by a person acting on their behalf before a Committee of the Council.

Michael Wootten
Chief Executive Officer

2010498v2



TISHER LINER FC LAW

BUSINESS PROPERTY LITIGATION

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

- Under Section 207C of the LGA, Councils must contact relevant infrastructure authorities to seek their views. This usually requires easements to be put in place as a condition of any discontinuance to protect the authority's assets or future plans in the area.

HOW ARE ROADS DISCONTINUED?

LOCAL GOVERNMENT ACT (1989)

- Any contract to sell the land must be conditional upon the notice provisions. The contract will either be entered before Council makes the decision, or usually after. It may be in a normal long form contract or a short form letter.
- Council will then make a decision at a meeting of council to decide whether to allow the Discontinuance and will address any submissions during that meeting and provide reasons for the decision.
- Parts of the meeting may be held in private if they relate to the sale aspect with an adjoining owner or if it relates to current court proceedings

MOVED: Cr. B. Li
SECONDED: Cr. J. Williams

That Council, having given public notice of a proposal to discontinue the section of road at the rear of 92 and 94 Miller Street and adjacent to 2 Mitchell Street, Preston, shown hatched on the plan enclosed as Appendix A to this report, and having received not submissions in respect of this proposal under section 223 of the *Local Government Act 1989*:

- (1) Discontinues the section of road in accordance with section 206 and schedule 10, Clause 3 of the Local Government Act 1989.
- (2) Directs that a notice be published in the Victoria Government Gazette.
- (3) Directs that the land from the road be sold by private treaty to the owners of the adjoining properties in accordance with Council policy and signed 'in-principle' agreements.
- (4) Signs and seals all documents relating to the sale of any land from the discontinued road to the owners of the adjoining properties.
- (5) Delegates power to the Chief Executive to do all other acts to enable any land from the road not sold to the adjoining property owners to be transferred to Council.

CARRIED

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

- Once the Council has approved the discontinuance, Council must publish a notice in the Government Gazette.

HOW ARE ROADS DISCONTINUED? *TRANSFER OF LAND ACT*

- Section 207B of LGA when the road is discontinued the land vests in the name of the Council. It may then lodge a transfer of land with Land Victoria.

HOW ARE ROADS DISCONTINUED? *LOCAL GOVERNMENT ACT (1989)*

- Councils will generally rezone the land being sold to ensure it is the same as the adjoining owner's land (if zoned differently)
- Rezoning usually requires ministerial approval

HOW ARE ROADS DISCONTINUED?

ROAD MANAGEMENT ACT (2004)

- Council or Vicroads can discontinue a road by following the procedure in Section 12 of the RMA which is similar to that in the LGA
- Authority must publish a notice in the Government Gazette
- Provide a copy of the notice to each infrastructure manager responsible for any infrastructure the Authority is aware installed in or under or over the road.

HOW ARE ROADS DISCONTINUED? *ROAD MANAGEMENT ACT (2004)*

- Submissions can be lodged by any party within 28 days
- Any submissions lodged must be considered
- Any person providing a submission who wants to be heard may appear at a meeting of the discontinuing body

HOW ARE ROADS DISCONTINUED?

ROAD MANAGEMENT ACT (2004)

- Infrastructure managers (Such as water authority) might require easements be created as a condition of the discontinuance
- After a decision is made the Authority must notify all submitters. If the Authority is Vicroads they must also set out the reasons for the decision
- If discontinued the land vests in the Authority (if not crown land)
- Council lodge a transfer of land and plan of survey with Land Victoria

HOW ARE ROADS DISCONTINUED? *DIFFERENCE BETWEEN RMA AND LGA*

- **LGA 207C** Where a council proposes to discontinue a road, it must contact public authorities providing services to see if they have "any right, power or interest...in connection with any sewers, drains, pipes, wires or cables under the control of the authority in or near the road" to be discontinued which are required to be saved under s207C of the LGA.
- **RMA 12(4)(b)** If a council proposes to discontinue a road it must (as it is also required to do under the LGA) publish a public notice of the proposed discontinuance. Council must then give a copy of the public notice to each infrastructure manager which is responsible for any infrastructure, of which the coordinating road authority is aware, installed in, on, under or over the road.

ROADS

- **For the purpose of adverse possession claims, there are three main types of 'roads':**
 - Carriage way easements
 - Roads reasonably required for general public use
 - Public highways

HOW ARE ROADS DISCONTINUED? *TRANSFER OF LAND ACT*

- **Adverse possession claims**
 - will remove all encumbrances (if non use for 30 years can be proven)
 - generally impossible to remove drainage/electricity easements
- **Removal of easement application- if carriage way needs council's consent**
- **Cannot be registered in Council's/Government/Authority's name. Sections 7 and 7B of Limitation of Actions Act (1958)**

RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- Laneway in South Yarra
- Being used by people to cut through to 'Lovers walk'
- VicTrack were the registered proprietor of the land
- Noted as 'road' on title



RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- Question to be decided:
- Whether 'road' was a public highway or a road under the LGA, RMA or common law
- The Plaintiff wanted the Court to find that it was not to ensure that VicTrack was compelled to seal off the Road
- The Plaintiff had attempted to fence the land twice a year prior to the proceedings, with both fences being removed

RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- Owner at 21 William Street wanted Victrack or Council to put a gate to prevent the public accessing the area
- The laneway was put on the public register of roads but not declared by notice in the Government Gazette and the laneway was not declared a public highway for the purpose of Section 204 of the LGA.

RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- **Public highway is defined in Section 3 (1) of the LGA as follows:**
- **“Public highway is a road which is open to the public for traffic as a right, irrespective of whether the road is in fact open to traffic, and includes a road:**
 - Declared to be a public highway under Section 204 of LGA;
 - Becomes a public highway under Section 24 (2) (c) of Subdivision Act
 - A public road under the RMA

RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- In 2004, Council put the laneway on the public register of roads
- The court held the laneway was a public highway because it had been open to the public and used '*without force, without secrecy and without permission*' for a very long period of time.
- The Court held that by including the laneway on the public register of roads it became a public road under the RMA and a road under the LGA.

RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- **A there was evidence that the laneway was open to the public and had been used for a substantial period of time, the laneway was also deemed to be a public highway for the purposes of the common law**

RECENT CASE LAW

Anderson v City of Stonnington and Victorian Rail Track (2016)

- The Court found that a public road under the RMA is also a road under the LGA by reason of Section (ca) of the RMA definition of public road. Further it is a public highway for the purpose of the LGA by reason of the definition of public highway in 3 (1) (c) of the LGA

CASE LAW

Bass Coast Shire Council v King

- Characteristics of 'public highway' were discussed.
- Block of land in Cowes with a strip of land (owned by the crown) noted as a 'road' on official maps. Trees grew on the road and it did not have physical characteristics of a road
- As the surveyor general department had surveyed the land and marked it as a road on official maps was sufficient to amount to a dedication by the crown of such a road as a public road.
- Therefore road had to remain open for use by public

CASE LAW

Fenelon v Dove (2009)

- Plaintiff's argued the defendant's were trespassing on the land, wishing to prevent interference with the fences around the licensed land and seek damages for trespass
- A licence to use the fenced unused road was granted to the first plaintiff by the council pursuant to Section 401 of the Land Act 1958
- The defendant's cut fences and drove over the unused road to gain access to their property
- The question was whether the defendants were entitled to pass over the road or whether they could be excluded from the unused road
- It was held the land was an unused road pursuant to s400(1) Land Act 1958. Therefore, members of the public can pass and repass over the licensed land without trespassing and a means of access must be provided at each end of the licensed land.
- The decision was appealed, but dismissed.

ONCE A ROAD ALWAYS A ROAD?

- The registration of a road on Council's road register results in the road becoming a 'public road' under section 17 (1) (e) under the Road Management Act (2004) and consequently a road and a public highway under Section 3 (1) of the Local Government Act
- The removal of a road from the roads register does not affect the status of the road as a public highway or the right of the public to use the public highway (Section 17 (5)) of the RMA.
- In order to remove the status as a public highway, the road needs to be discontinued (Schedule 10 of LGA) for council roads and a declaration that the road is unused if a government road (S 400 of Land Act 1958)

ONCE A ROAD ALWAYS A ROAD?

- If the road was on the public register of roads and has been removed by Council, unless the road has been discontinued, an occupier may not be entitled to claim the land by adverse possession as the land may still be deemed a public highway for the purpose of the RMA and LGA.

LESSONS FOR SURVEYORS AND CLIENTS MAKING ADVERSE POSSESSION CLAIMS

For laneways enclosed check to make sure:

- it is not on the public register of roads
- It has not been used for a period of 30 years
- is not in the name of Council, Crown or a relevant authority

AND If a laneway is open:

- Check to see whether it flows through to other roads or properties or whether it is really just a drive. If it is open to others the client's only option may be to deal with the Council and other users of the laneway as most likely discontinuance is the only way to get title to the land

LESSONS FOR SURVEYORS AND CLIENTS WANTING TO USE OR PREVENT USE OF A ROAD

- **If a laneway is enclosed, in order to re-open:**
 - Check use of it over time;
 - See if it has been put on the public register of roads. If so and it has been removed from the register has it been formally discontinued? If not it may still be a public highway
- **If a laneway is open, in order to close**
 - Check use and connections with other roads and land
 - Check title owner
 - If not on public register and can prove not used then make application for abandonment if carriage way easement
 - May require consent of council or might have to change status as part of planning permit
 - Enclose for 30 years

WHAT DO CLIENTS DO IF THE COUNCIL PROPOSES TO DISCONTINUE A ROAD?

- Check who the registered proprietor is. If a company is the registered proprietor and the company has been deregistered then the land vests in the name of the Australian Securities and Investments Commission who can then transfer the land to Council outside the discontinuance process if the land is noted as a 'road' on title.

WHAT DO CLIENTS DO IF THE COUNCIL PROPOSES TO DISCONTINUE A ROAD?

- Assuming the land has been enclosed within the client's land for a period exceeding 30 years and is not on the public register of roads and not registered in the Council's name:
- Client should decide whether it is easier and cheaper to buy the land from the Council. If not:
 - Obtain a survey
 - Lodge a caveat on the title
 - Lodge a formal objection to council in respect to the road discontinuance
 - Lodge an application for adverse possession as soon as possible seeking title clear of all encumbrances

HOW CAN TISHER LINER FC LAW ASSIST SURVEYOR'S CLIENTS

In the Property area:

- **Adverse possession claims**
- **Dealing with Councils in Road Discontinuances**
- **Easements and their removal**
- **Restrictive covenants**
- **Developments and registration of subdivisions**
- **Compulsory acquisitions**
- **Owners Corporation structuring**

QUESTIONS?

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