

# Road and Reserves Discontinuance and Sale Policy

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## 1. TITLE

Road and Reserves Discontinuance and Sale Policy

## 2. OBJECTIVE

To ensure that Council has a consistent and equitable approach to dealing with the Discontinuance and sale of redundant Roads and Reserves.

## 3. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
Discontinue/Discontinuance	In this policy means the exercise of power under clause 3 of schedule 10 of the <i>Local Government Act 1989</i> in relation to a Road or the removal of reserve status in relation to a Reserve under section 24A of the <i>Subdivision Act 1988</i>
Government Road	A Road established on the parish plan and held in the ownership of the Crown
Road/s	the same meaning as is set out in section 3(1) of the <i>Local Government Act 1989</i> .
Reserve/s	a narrow parcel of land such as a drainage reserve set aside as a reserve on a plan of subdivision but not set aside for recreational purposes.

## 4. POLICY

### 4.1 GENERAL

The following general principles will apply in relation to the Discontinuance and sale of Roads and Reserves:

- Council will not Discontinue a Road or Reserve and the sell the land if the land is still required for a public purpose (now or in the future) which includes:
  - A strategic purpose;
  - public vehicular and/or pedestrian access;
  - public open space;
  - historical significance or provides improved character to the area; or
  - public works or flood mitigation.
- Where a decision is made that a section of Road or Reserve is redundant, Council may:
  - take no action;
  - Discontinue the Road or Reserve status and retain in Council's ownership; or
  - sell the land.
- Where part of the Road or Reserve are to be Discontinued and Council or another authority need to retain an interest in the land, Council may require that the land be encumbered with an easement in favour of the relevant authority.
- If the land is to be sold, Council may require the purchaser to meet the cost of relocating the assets, if they require relocation
- Council may require the removal of any obstruction over a section of Road or Reserve
- Council will generally sell sections of Discontinued Road or Reserves to abutting property owners unless due to the size or location of the land it is in the public interest to sell the land on the open market.
- An owner may attempt to claim a Road or Reserve by adverse possession when the land is not held in Council ownership. Council reserves the right to contest such a claim.
- Council may instigate the Discontinuance of a Road or Reserve.

- A Discontinuance of a Government Road will vest the land in the Crown and Council has no power to transfer such land or take control over it, therefore will only proceed with the discontinuance of a Government Road where there is community benefit associated with the proposal.

## 4.2 FINANCIAL CONSIDERATIONS

All applications for a Road Discontinuance will be accompanied by a non-refundable application fee to be established in the fees and charges section of the annual Budget. The application fee will be deducted from the sale prices and costs payable for the proposal, if the matter proceeds to a sale of land. Where a property owner has requested that Council Discontinue a Road or Reserve, Council may not proceed if the proposal is not economically viable.

Where Council decides to sell a Discontinued Road or Reserve, it will do so at the current market value as assessed by a qualified valuer, except:

- where the person seeking to acquire the land can demonstrate there has been continuous and exclusive occupation of the subject land for at least the previous 15 years, in which case Council may sell the land at 50% of the current market value; or
- if the benefits accruing to the community from the sale justify a lower sale price. This would only be in exceptional circumstances and may include where ongoing maintenance costs are substantial or there would be improvements to community safety by consolidating the land into private ownership.

The purchaser/s of the land must pay all Councils out of pocket costs associated with the Discontinuance and transfer of the land, which may include valuation, survey, public notice, and legal costs, as well as the relocation or replacement of fences and authorities' assets if required.

The full purchase price must be paid to Council at the time of settlement except in exceptional circumstances where the Director Corporate Services may approve terms payments for up to 3 years, where applicants are experiencing financial hardship. Council may also charge administrative costs and interest on such payments. Title to the land will not pass to the purchaser(s) until the full purchase price plus any costs and/or interest are paid.

## 4.3 Land Allocation

Where Council proposes to Discontinue and sell a Road or Reserve, it will first offer parcels of the land to those owners of properties that can demonstrate continuous and exclusive occupation of those parcels for at least the last 15 years.

Where occupation of the land in excess of 15 years does not apply, Council will first offer to divide the land and sell parcels to the owners of abutting properties subject to the alignment of any authority's assets.

Where it is not feasible to divide the land in such a way that it can be equitably shared (particularly where assets dissect the land), and more than one owner wants to purchase the land, Council may invite those owners to make an offer and will accept the highest offer submitted. Council must not accept an offer less than market value.

Where no agreement can be reached between the parties for the purchase of any portion of land, the land shall remain vested in Council until such agreement can be reached. The owner(s) of any property in occupation of the land may be directed to remove all buildings and obstructions from the land immediately, as is Council's right as owner of the land.

Owners will be encouraged to consolidate the land purchased from Council with their abutting land parcel.

## 5. HUMAN RIGHTS CHARTER COMPATIBILITY

*This Policy has been assessed as being compatible with the Charter of Human Rights and Responsibilities Act 2006 (Vic).*

## **6. ASSOCIATED INTERNAL DOCUMENTS**

Property Strategy

## **7. EXTERNAL REFERENCES/RESOURCES**

*Charter of Human Rights and Responsibilities Act 2006*

*Local Government Act 1989*

*Local Government Act 2020*

*Planning and Environment Act 1987*

*Subdivision Act 1988*