

Road Discontinuance Policy 2024

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A policy is a broad statement of intent that enables decision making by providing clear direction of what will or will not be done. A policy defines Council's position and role, provides the framework for a consistent approach, and guides decision making. This template contains the minimum requirements; you may need to include additional sub-headings to cover specific policy requirements.

If you are looking to develop an 'approach' document, and/or an action plan, you need a strategy not a policy; please use the 'General strategy' template instead.

1 Policy alignment

The following key priority articulated by "Our Vision" in the Cardinia Shire Council Plan 2021-25 underpins this Policy.

'Cardinia Shire supports the creation of liveable spaces and places'

2 Purpose

The Road Discontinuance Policy (Policy) establishes guidelines for Council when assessing the suitability of an application to Council to Discontinue a Road or Reserve with a view to retain the land or sell the land to an adjoining owner.

3 Scope

The Policy will apply for Council land that is designated as a Road or Reserve, and which is no longer required for that purpose or any other Council purpose and may be considered unused.

Council will only consider the Discontinuance of a government Road where there is some significant community benefit or strategic outcome to justify the decision of Council involvement, as the resulting land will revert to the crown.

4 Policy description

4.1 Objectives

All Discontinuance Proposals must be economically viable for Council, otherwise Council will not embark on the proposal.

To provide guiding principles for Council and interested parties to facilitate the Discontinuance and sale of Roads and Reserves.

In the interest of enhancing land usage and improving both public safety and personal security, Council supports the Discontinuance and sale of Roads and Reserves which are no longer reasonably required for public use.

To ensure they are dealt with in a manner that is impartial and consistent, the Policy establishes principles for consultation, achieving an equitable return and ensuring an opportunity for better utilisation of such land.

4.2 Background

Council is supportive of the Discontinuance of Roads and Reserves and the sale of the land if such land is not required for the following purposes:

- access;
- drainage;
- forming part of the assets of any Statutory authority including Melbourne Water, South East Water, Yarra Valley Water, Telstra, Citipower, Comdain Gas, APA and Ausnet, etc.;
- Road to be constructed and maintained by Council;
- strategic value to Council either now or potentially in the future; or
- generally required for municipal purposes.

If such land is not required for the above reasons, it will be considered in accordance with this Policy.

4.3 Definitions

In this Policy the following definitions apply:-

‘DISCONTINUANCE’ means the exercise of power under Clause 3 of Schedule 10 of the Act in relation to a Road which is effected by a notice published in the Government Gazette and / or the removal of reserve status in relation to a Reserve under section 24A of the Subdivision Act 1988.

“LAND” means the site which was formally a Road or Reserve, which has been Discontinued.

“LGA 1989” means the *Local Government Act 1989*.

“LGA 2020” means the *Local Government Act 2020*.

“ROAD” is as defined in Section 3 of the *Local Government Act 1989* (LGA 1989). The term “road” includes, but is not limited to, a right of way, laneway, street or footpath, either used for vehicular or pedestrian access, or both.

“RESERVE” means a reserve set aside for drainage and to mitigate flood levels, or some other minor reserve such as a tree reserve and does not include reserves set aside for recreational or open space purposes.

4.4 Legislative Requirements

Various relevant legislation defines the processes to be carried out for the sale of land, but the following specific sections are relevant to the sale of such local government property:-

- *Section 114* of the *Local Government Act 2020* (LGA 2020) provides the power for Council to sell land. This section includes requirements to carry out community engagement.
- *Section 206 and Clause 3 of schedule 10* of the *LGA 1989* provides the authority for Council to discontinue a Road or part thereof and sell it to a third party or retain it for municipal purposes,

furthermore section 223 provides for Council to give public notice and hear submissions received in relation to the proposal to Discontinue and sell Land.

- Section 17(4) of the Road Management Act 2004 required the Road to be removed from Council's Register of Public Roads if applicable as it is no longer reasonably required for general public use.
- Under section 7B Limitations of Actions Act 1958 a person cannot claim land by adverse possession in respect of Council titled land, this includes roads. Not all Road or Reserve property is held in Council name.
- Council also has the power under Section 24A of the Subdivision Act 1988 to initiate procedures to remove the reserve status and vest in itself all or part of a minor reserve, which will allow for it to sold to a third party.

4.5 Council's role

Council may initiate a Discontinuance or respond to an application from interested parties in relation to such land.

The achievement of the objectives of this Policy will:

- 4.5.1** reduce Council's long term financial and legal liability for this land (i.e. maintenance, cleaning, public liability);
- 4.5.2** improve local amenity for residents (e.g. increasing security of property by elimination of access points);
- 4.5.3** formalise existing occupation of Roads and Reserves, providing a clearer control of the land and allocation of obligations; and
- 4.5.4** provide additional revenue generated from the sale of land and the reduction in legal and financial liability.

4.6 General principles

The following general principles will apply for the Discontinuance and sale of Roads or Reserves:

- 4.6.1** Council will encourage the Discontinuance and sale of Roads or Reserves that are not being used for pedestrian or vehicular access or are no longer required by Authorities or for other strategic and public use.
- 4.6.2** Council discourages the unauthorised occupation of Roads or Reserves and may take steps to remove such illegal occupation.
- 4.6.3** Council will only sell Discontinued Roads or Reserves to abutting property owners.
- 4.6.4** Council or its Solicitors shall recover all costs incurred in the application of the Policy.
- 4.6.5** Council reserves the right to retain any Discontinued Road or Reserve. This land may be retained to meet a strategic need or sold at some point in the future in accordance with the Policy.

- 4.6.6 Council has the right to place an easement or covenant on or over Discontinued Roads or Reserves in order to protect existing rights or future requirements.
- 4.6.7 Council will require any Discontinued Road or Reserve that is purchased to be consolidated with the abutting land title within six months of the purchase of the land.
- 4.6.8 Council will not assist with adverse possession claims over Roads and Reserves and reserves the right to contest such claims.
- 4.6.9 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.

4.7 Division of land

- 4.7.1 Council will offer Discontinued Roads or Reserves equally to abutting owners, except where:
 - 4.7.2 the land has been proven to have been exclusively occupied and fenced for more than 15 years in which case it will be offered directly to the occupier; or
 - 4.7.3 the land cannot be allocated due to the location of assets, in which case the boundary will be established to take account of the assets.
 - 4.7.4 If an abutting property owner does not wish to take up Council's offer to purchase the land, then that portion shall be offered to other abutting or adjoining property owners when appropriate.
- 4.7.5 Council will not proceed with a Road Discontinuance and sale that creates landlocked land.
- 4.7.6 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.

4.8 Financials

4.8.1 Sale of Land

Council will sell all Discontinued Roads and Reserves at market value, as determined by a valuer appointed by Council.

If continuous exclusive occupation can be demonstrated of the Road or Reserve in excess of 15 years the purchase price may be set within a range to a maximum discount of 20% of the current market value.

4.8.2 Application Fee

Council will charge a non-refundable application fee to those who submit an application form. This fee is determined on an annual basis in accordance with the Local

Government Act and Council's Fees and Charges Schedule. However, if the matter proceeds to a sale it will contribute to the total sale price.

4.8.3 Costs

Costs associated with the Discontinuance and sale of the Roads or Reserves are to be shared by applicants. This will include costs such as:-

- Legal fees and duties;
- Public notice;
- Government Gazette notice;
- Survey costs;
- Title registration costs; and
- Valuation fees.

4.8.4 Asset relocation

The relocation or replacement of any assets within a section of land, will be the responsibility of the purchaser. These will include the following:

- Statutory authority assets including Melbourne Water, South East Water, Yarra Valley Water, Comdain Gas, Telstra, Ausnet, APA or Citipower etc.
- Replacement drainage or relocation of drainage, if required.

Bluestone Pitchers (if any) or other re-useable materials remain the property of the Council and Council may require the removal and return to Council.

4.8.5 Transfer of Title

The purchaser is responsible for their role in the PEXA (Property Exchange Australia) transfer process and payment of all stamp duty and lodgement fees. Professional services via legal practitioner or conveyancer will be required to facilitate the lodgement of the PEXA Transfer and associated documentation.

4.8.6 Terms payment

The full purchase price shall be paid to Council at the time of settlement, except in extraordinary circumstances. The transfer of land shall not be passed on to the purchaser until the purchase price plus all costs or additional amounts are paid in full.

4.9 Authority

The Governance Manager will be responsible for the implementation and management of the Policy and the relevant procedures.

The Senior Leadership Team may be called upon to resolve issues that may arise from the application of the Policy.

4.10 Sunset Clause

The Policy will be reviewed in four years.

4.11 Responsibilities

Councillors and Senior Management have responsibility to promote the principles of the Policy and Council are responsible to administer the Policy.

5 Compliance

Council will ensure Compliance with the Policy by means of internal referrals and external referrals to various Authorities, appropriate public consultation and implementing necessary measures available with Land Use Victoria and related Statutes.

5.1 Recourse for non-compliance

By applying a consistent approach to assessing the suitability of an application there is less risk of inequity to residents and failure to suitably complete the application.

6 Related documents

Type of document	Title and/or RMC link
Commonwealth/Victorian legislation	Local Government Act 1989 Local Government Act 2020 Subdivision Act 1988 Planning and Environment Act 1987 Road Management Act 2004 Limitations of Actions Act 1958 Transfer of Land Act 1958
Strategic directions paper	(If developed)
Policies	Community Engagement Policy
Strategies	Property Strategy
Guidelines	Local Government Best Practice Guidelines for the Sale and Exchange of Land
Procedures	