

Management report to Council

Agenda item 6.2

Proposed Road and Reserves Discontinuance and Sale Policy

Council

Presenter: Roger Teale, General Manager Property, Infrastructure and Design

25 October 2022

Purpose and background

1. The purpose of this report is to seek Council approval to adopt the Road and Reserves Discontinuance and Sale Policy (the Policy) see Attachment 2.
2. Council adopted the [Road Discontinuance and Sale Policy](#) in May 2017 and a review has been undertaken to update that policy, to include format changes and legislative changes.
3. Council adopted the Sale and Acquisition Land Policy (SALP) in June 2019 to guide decision making in relation to the disposal and acquisition of Council owned land. The SALP specifically excludes the sale of discontinued roads or reserves.
4. Council roads and minor reserves contribute to the connectivity of the city, however at times there are requests to discontinue and sell parts or all of a road or sell a minor reserve, whether it be at ground level, above ground as air space, or below ground at basement level.

Key issues

5. It is important that Council not only strategically manages the discontinuance and sale of roads or minor reserves for the long-term best interests of the City of Melbourne community, but also ensures decisions relating to the process are soundly based, transparent and legally compliant.
6. The purpose of the Policy is to provide a framework of broad principles to guide decision making in relation to the discontinuance and sale of roads and minor reserves.
7. The Policy applies to all roads and minor reserves, such as drainage reserves or verge strips, and considers the way Council discontinues and sells roads and minor reserves within the municipality.
8. The Policy will ensure Council:
 - 8.1. acts in accordance with the *Road Management Act 2004*, only proposes to discontinue roads where it considers the road is no longer reasonably required for general public use
 - 8.2. has a consistent, equitable and transparent process in relation to the discontinuance and sale of roads and reserves
 - 8.3. complies with best practice and legislative requirements when undertaking the discontinuance and sale of roads and reserves.
 - 8.4. has a policy that compliments the SALP, to achieve best value (both financial and non-financial) in all of its land dealings.

Recommendation from management

9. That Council:
 - 9.1. adopts the Road and Reserves Discontinuance and Sale Policy (the Policy) see Attachment 2 of the report from management
 - 9.2. revokes the former Road Discontinuance and Sale Policy adopted by Council on 30 May 2017
 - 9.3. authorises the Director City Property to make any further minor editorial changes to the Policy prior to publication.

Attachments:

1. Supporting Attachment (Page 2 of 6)
2. Road and Reserve Discontinuance Policy (Page 4 of 6)

Supporting Attachment

Legal

1. Where the Council proposes to discontinue a road, it must comply with the *Road Management Act 2004* and the public notice and submission process set out in the *Local Government Act 1989*.
2. Where the Council proposes to sell land (including a discontinued road), it must comply with the public notice, valuation and community engagement process in accordance with the *Local Government Act 2020*.

Finance

3. Generally, Council land resulting from a discontinuance of a road should not be sold at a price which is less than the current market value assessed by a valuer engaged by Council, unless Council can justify the circumstances to sell the land at less than market value.
4. All costs associated with the discontinuance and sale of a road or minor reserve process will be passed on to the applicant, including a non-refundable application fee and a bank guarantee to meet Council's reasonable costs.

Conflict of interest

5. No member of Council staff, or other person engaged under a contract involved in advising on, or preparing this report, has declared a material or general conflict of interest in relation to the matter of the report.

Health and Safety

6. In developing this proposal, no Occupational Health and Safety issues or opportunities have been identified.

Stakeholder consultation

7. Consultation with key internal stakeholders has been undertaken. External consultation is not required as the document is an administrative policy.

Relation to Council policy

8. This report is to adopt the Policy to replace the current Road Discontinuance and Sale Policy 2017.
9. This proposed policy aligns with the SALP.

Environmental sustainability

10. There are no immediate environmental sustainability issues relevant to this proposal however actions resulting from the Policy may raise issues that will be assessed on a case by case basis.

CORPORATE POLICY

ROAD AND RESERVES DISCONTINUANCE AND SALE POLICY

Policy owner:	Director City Property
Date this policy was last reviewed:	(Insert date of endorsement)
Next review scheduled:	(Insert date five years after the date of endorsement)

1. Purpose

The purpose of this Policy is to ensure that Council:

- Has a consistent, equitable and transparent approach in relation to the Discontinuance and sale of Roads and Reserves within the municipality of Melbourne.
- Complies with best practice and legislative requirements when undertaking the Discontinuance and sale of Roads and Reserves.
- Strategically manages Roads and Reserves for the long term best interests of the City of Melbourne community.

2. Scope

This Policy considers the way Council discontinues and sells Roads and Reserves within the City of Melbourne municipality. It is a general policy that outlines Council's principles and is intended as a framework that will assist Council in the Discontinuance and sale of Roads and Reserves.

3. Definitions

'Act' means the *Local Government Act 1989*.

'Approved Development' means a development approved under the *Planning and Environment Act 1987* for land that includes a road that is required to be discontinued.

'Council' means the Melbourne City Council.

'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*.

'Market Value' means the value of the land as determined by a qualified valuer appointed by Council, based on, but not limited to the following methodology and criteria:

- The land area and dimensions.
- The highest and best potential use of the land.
- Increase in value to any abutting property as a result of the transfer of the land as a before and after valuation.
- The potential for, or the enhancement of, an abutting property for redevelopment as a result of the transfer of land.



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- The additional costs to be applied as the result of any easements, encumbrances or other assets being retained on the land as a requirement of Council or other statutory authorities.

'Reserve' means a drainage reserve or reversion strip set aside as a reserve on a plan of subdivision. It does not include reserves for recreation or open space purposes.

'Road' means a road as defined in the *Act*.

4. Application

This Policy applies to Roads and Reserves within the City of Melbourne municipality.

This Policy does not apply to any other Council land held in freehold title or vested in Council, which is governed by Council's Sale and Acquisition of Land Policy.

The sale component of this Policy does not apply where a Road is located on Crown land.

5. Policy

The Discontinuance of a Road or Reserve is a significant Council decision. All Roads and Reserves are to be retained if the Road or Reserve is required for the use it was set aside for and is reasonably required for general public use.

5.1 Retention of Road and Reserve Principles

All Roads and Reserves are to be retained except where the Road or Reserve:

1. Is no longer required for the use it was set aside for; and
2. Is no longer reasonably required for general public use; and
3. Will not obstruct necessary service and access arrangements; or
4. Does not, or will not support, facilitate or contribute to Council's current or future land use requirements as identified in the Council Plan; or
5. If discontinued and sold, will facilitate and / or promote investment and positive economic development outcomes; or
6. Does not contribute historic, economic, environmental or community benefit to the municipality to justify its retention; or
7. Has no strategic significance to Council on a long term basis; or
8. Is not identified in a Council strategy, plan, budget, policy or planning scheme.

5.2 Considerations for Discontinuance

To ascertain whether or not a Road or Reserve meets the principles for retention or may be suitable for discontinuance and / or sale, a discontinuance assessment will be carried out having regard to the above eight retention principles (outlined in section 5.1 above).

Council's powers to discontinue and sell a Road or Reserve is discretionary, meaning Council in its absolute discretion can refuse to proceed with a Discontinuance application if the Road or Reserve



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meets the principles for retention, regardless of an Approved Development. An applicant has no formal rights of appeal to such a decision.

Council may only consider a Discontinuance of a Road associated with an Approved Development if the Approved Development meets the objectives of the Melbourne Planning Scheme.

Council will only consider the Discontinuance of a government Road where there is significant community benefit or strategic outcome to justify the decision for Council to carry out the Road Discontinuance. Noting that the resulting land will vest in the Crown and not Council.

Council may require an applicant to enter into a Section 173 Agreement as a condition of the Discontinuance and sale to provide support, access, projections and / or consolidation of title.

5.3 Consultation

Where the Discontinuance assessment has been undertaken and it is determined that the Road or Reserve is not required for retention, then that Road or Reserve can be set aside for a proposed Discontinuance and sale.

The Discontinuance and sale of a Road or Reserve must undergo a public notification and submission process and will, at a minimum meet the statutory requirements of the Act, the *Local Government Act 2020* and comply with Council's Community Engagement Policy.

A decision by Council or a delegate of Council is required for specific approval to commence the statutory process to discontinue and sell a Road or Reserve.

A resolution of Council is required for a final decision on the proposed Discontinuance and Sale of a Road or Reserve after the completion of the statutory process.

5.4 Division of Road or Reserve

Where practical, Council will offer the Road or Reserve equally to abutting owners, except where:

- an abutting owner can demonstrate continuous and exclusive occupation of the Road or Reserve for at least the last 15 years in which case, the Road or Reserve will be offered directly to the occupying owner
- there are services within the Road or Reserve that affect a boundary location.

Council will not proceed with the Discontinuance of a Road or Reserve that will create any land locked land.

5.5 Financial

An applicant must pay a non-refundable application fee and provide a bank guarantee to meet all of the Council's reasonable costs associated with a Road or Reserve Discontinuance, regardless of whether the application proceeds or not.

The applicant will be responsible for all costs associated with the relocation or removal of any assets, infrastructure, fences or other encroachments on the land resulting from a Discontinuance of a Road or Reserve. Council reserves the right to retain any assets from the Road or Reserve including bluestone pitches or other pavers.



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The sale of any land resulting from a Discontinuance of a Road or Reserve must be sold at Market Value determined by Council unless a price below Market Value is supported by a Council resolution.

6. Responsibilities

Ongoing review and updates to this Policy is the responsibility of the Property and Leasing Manager.

7. References

Related Policies and Procedures:

- Local Government Best Practice Guidelines for the Sale and Exchange of Land
- Supporting Road Discontinuance and Sale Procedures
- Community Engagement Policy
- Sale and Acquisition of Land Policy

Related Legislation and Regulations:

- *Limitations of Actions Act 1958*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Planning and Environment Act 1987*
- *Road Management Act 2004*
- *Subdivision Act 1988*
- *Transfer of Land Act 1958*