

Road Discontinuance and Sale Policy

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| **Responsible Department** | Place & Environment  Property, Place and Design |

This policy has been authorised.

Cathy Henderson

**Chief Executive Officer**

Date: 15 August 2024

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# Introduction

Historically, rights of way and laneways (roads) were established as part of the road network to service the rear of properties including for night-soil removal. Over time, the use of these roads and the need for them has changed. In many cases the road remains required for access and/or other strategic purposes, however in some cases unused roads may be identified as unnecessary for future needs.

Council is the responsible road authority for many roads, roadside, and pathways across the municipality and acknowledges the importance of managing these roads effectively to ensure they continue to serve the best interests of the community. Where a road is no longer reasonably required for uses such as access, drainage or strategic purposes, Council encourages their discontinuance for ultimate sale and transfer.

Application of this policy will ensure that Council has a consistent, equitable and transparent approach to the discontinuation of roads and sale of resultant land, that it complies with best practice and legislative requirements when undertaking these processes and that it strategically manages roads for the long-term best interests of the Merri-bek community.

# Context

Applying to all roads, including constructed or unconstructed roads and rights of way vested in Council, where whole or part of the road may be no longer reasonably required for public use.

This policy provides clear guidelines, terms and conditions for the consideration of a road discontinuance and sale process across the municipality.

This policy does not apply to the closure of roads to traffic under Schedule 11 of the Local Government Act (1989), the sale or disposal of assets that are not roads, permits over roads, maintenance of roads, projections over roads (including aerial encroachments), licencing of land or roads closed pursuant to the Major Transport Projects Facilitation Act 2009.

Council acknowledges the cultural importance and historical value of bluestone laneways as integral elements of Merri-bek's heritage and urban identity and is committed to preserving bluestone kerb and channelling, as well as the integrity of bluestone laneways throughout the municipality. Council will not usually consider a request for discontinuance and sale of bluestone rights of way.

## Alignment

Merri-bek City Council’s Council Plan is an overview of Council’s values, commitments, and activities. The plan sets out strategic objectives against which Council and its administration measures its performance. Each strategic objective is supported by major initiatives and priorities which are further detailed in annual Council Action Plans.

This policy is aligned with the Strategic Property Framework which provide the principles guiding sale decisions following a road discontinuance process.

## Organisational context

Council has the power to discontinue roads, including rights of way, under section 206, schedule 10, clause 3 of the Local Government Act 1989.

Council has the power to sell the land from a former road in accordance with section 206 and schedule 10, clause 3 of the Local Government Act 1989 and section 114 of the Local Government Act, 2020 which, in most instances this would be a sale/transfer to an abutting property owner. As per section 207A Council is obliged to consider submissions made under section 223 of the Local Government Act 1989 prior to making a decision to discontinue a road.

This policy is consistent with, and supported by, Council’s legislative obligations, which primarily include:

* *Charter of Human Rights and Responsibilities Act* 2006
* *Limitations of Actions Act* 1958
* *Local Government Act* 1989
* *Local Government Act* 2020
* *Planning and Environment Act* 1987
* *Road Management Act* 2024
* *Subdivision Act* 1988
* *Transfer of Land Act* 1958

This policy has been developed in accordance with Council’s Community Engagement Policy 2023 which outlines our commitment to genuinely involving our community in decision-making so we can deliver better quality outcomes.

Unless otherwise authorised by delegation, where any act, matter or thing is required to be done under this policy, the decision to do the act, matter or thing is to be made by a resolution of the Council. Any obligation imposed on the Council under this policy does not fetter the future exercise of any statutory discretion by the Council, and the provisions of this policy must be read accordingly.

# Objectives

The objectives of the Road Discontinuance and Sale Policy are to:

* to ensure that roads that remain reasonably required for general public use are retained.
* to encourage the discontinuance and sale of roads that are no longer reasonably required for general public use.
* to provide a consistent and equitable approach to assess, discontinue and potentially sell roads.
* to achieve financial and environmental outcomes that benefit both Council and the community.
* align with the vision, purpose and values outlined in the Council Plan and ensure that Council meets its various legislative obligations.

# Policy details

Council reserves the right to manage, retain, discontinue and dispose of any road at its sole discretion.

Disposal may occur if the road is deemed not reasonably required for general public use (meaning it does not provide for access or does not hold any other strategic value to Council) and its disposal could lead to a more beneficial use. Generally, would reflect rights of way that have been classified as Class 4, as defined at Section 7 of this Polciy.

## Guiding principles

Land transactions represent a significant decision for Council, requiring careful consideration. Council’s commitment to carefully managing the discontinuation process will be governed by these guiding principles:

1. *Maximise community benefit*

Consider whether the road is required for the use it was set aside for, whether it is reasonably required for general public use, service authority use or access or whether it contributes to historic, economic, environmental or community benefit.

1. *Deliver the Council Plan*

Consider whether the road will support, facilitate or contribute to Council’s current or future land use requirements as identified in the Council Plan, any adopted strategy, plan, budget, policy or planning scheme, requiring retention of the road.

1. *Making assets work harder*

Consider whether the road has strategic significance to Council on a long-term basis and if discontinued and the resultant land sold, will facilitate and / or promote investment and positive economic development outcomes.

1. *Act responsibly*

Ensure good governance and deliver financially responsible, compliant and transparent property transactions.

## Procedures

Any proposal for discontinuation and sale of a former road will be assessed on a case-by-case basis after consideration of the strategic value of the land, the potential benefits of its disposal and the impact on the community and environment, as per the guiding principles.

Discontinuation of roads and sale of resultant land will be undertaken in a fair and transparent manner in accordance with relevant legislation, regulations and policy, including undertaking a thorough community engagement plan, public notice period, submission and hearing process as per the process outlined in **Appendix 1.**

## Sale conditions

The following prescriptions apply:

* Resultant land will be sold at current market valuation, as assessed by a certified practicing valuer appointed by Council.
* The purchaser/s will be required to pay all of Council’s out of pocket expenses, including but not limited to legal, surveying, conveyancing, advertising and administration.
* GST is applied to land sales and administrative expenses.
* Council retains discretion in the allocation of land, taking into account occupation, interest and location of services.
  + - Council will acknowledge and give preferential allocation rights to persons who can demonstrate continuous exclusive occupation of land.
    - Unoccupied land will be offered in equal proportions to those properties which it abuts (where possible).
    - Where there is no willing purchaser, the land may remain un-transferred in Council ownership.
* Council will not consider discontinuation and sales which will create landlocked parcels.
* If drainage is to be installed, this shall be undertaken prior to erection of fencing and at the expense of the acquiring property owners. A drainage easement shall be created over such lands.

Council encourages the consolidation of a former road title with the abutting property to simplify future title and ownership matters.

## Encroachments

Upon identification of unlawful occupation of rights of way, the following options will be considered:

* opportunity to purchase the land (if feasible)
* opportunity to enter into a lease or licence agreement with Council (conditions and charges will apply), at the discretion of Council.
* removal of the encroachment and cessation of occupation under the Merri-bek Local Law.

In cases where these options are not feasible or if the unlawful occupation continues, Council reserves the right to take further legal action.

## Adverse possession

Where occupants can demonstrate continuous exclusive occupation over rights of way, Council may consider undertaking a road discontinuance and sale process.

Crown and Council Land is not subject to an adverse possession claim.

# Roles and responsibilities

Every person involved in the administrative functions for discontinuation of a road has a responsibility to ensure that actions are carried out in alignment with the Road Discontinuance and Sale Policy.

Key roles and responsibilities of internal Council units have been outlined for the purpose of clarity and understanding as follows:

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| **Party/parties** | **Roles and responsibilities** | **Timelines** |
| Property Unit | * Undertake administrative functions required to facilitate a road discontinuation process in accordance with this policy and any accompanying procedures * Liaise with internal stakeholders as required * Liaise with external stakeholders, contractors, service authorities, legal services and other government bodies as required * Assess objections to road discontinuance proposals prior to entering the road discontinuance process * Manage the invoicing of purchasers * Preparation of Council reports * Compliance with statutory procedures * Review the Road Discontinuance and Sale Policy and its processes | Ongoing |
| Transport Branch | * Maintain an up-to-date public Road Register as required under the Road Management Act 2004 and coordinate a full review of Council’s Road Management Plan every four years * Undertake administrative functions required to manage the Road Register and Road Management Plan in accordance with the Road Management Act 2004 including identification, addition and removal of roads as required * Update systems when notified of a discontinuance and sale * Review of any internal referrals and provision of specialist advice in relation to proposed road discontinuance and land transactions. | Ongoing |
| Building Services Unit | * Review of any internal referrals and provision of specialist advice in relation to proposed road discontinuance and land transactions. | Ongoing |
| Development Engineering Unit | * Review of any internal referrals and provision of specialist advice in relation to proposed road discontinuance and land transactions. | Ongoing |
| Engineering Services – Drainage Engineering Unit | * Review of any internal referrals and provision of specialist advice in relation to proposed road discontinuance and land transactions. | Ongoing |
| Finance Branch | * Establishment of appropriate income/expenditure accounts * Facilitate the payment of settlement funds * Facilitate the receipt of settlement funds * Follow up outstanding debtors * Financial planning for strategic property transactions | As required |
| GIS | * Keep up to date information in relation to land transaction outcomes. * Provide assistance with provision of aerial plans where required. * Update systems when notified of discontinuance and sale | Ongoing |
| Open Space Design and Development Unit | * Review of any internal referrals and provision of specialist advice in relation to proposed land transactions (if near Open Space) | As required |
| Open Space Maintenance Unit | * Review of any internal referrals and provision of specialist advice in relation to proposed land transactions. | Ongoing |
| Place Revitalisation | * Review of any internal referrals and provision of accurate advice in relation to proposed land transactions (if located in an activity centre) | As required |
| Revenue Services | * Assistance with property, rates and valuation matters * Update systems when notified of discontinuance and sale | As required |
| Urban Planning | * Review of any internal referrals and provision of specialist advice in relation to proposed road discontinuance and land transactions. | Ongoing |

# Monitoring, Evaluating and Review

This policy will be reviewed after 10 years and following significant legislative changes, if they occur.

# Definitions

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| **Term** | **Definition** |
| Asset | A resource owned or controlled by Council, from which it expects to derive economic benefits or use for service delivery to residents, ratepayers and the public |
| Bluestone laneway | Rights of way that has bluestone kerb and channel and/or paving either in full or part. |
| Classification | The system of classification for Merri-bek rights of way.  Class 1 - ROW that are within the boundaries for activity centres and are seen as critical for pedestrian and bicyclist permeability. Required for public access and exhibit values of connectivity and proximity to mixed-use activity areas  Class 2 - ROW that may be required for reasons including improving pedestrian permeability and connections, have an important drainage function or offers strategic development opportunities.  Class 3 - ROW that are not within an activity centre but are needed for private access to properties.  Class 4 - ROW no longer required for public use and can be discontinued and sold. |
| Council | Merri-bek City Council |
| Council land | Any land registered or capable of being registered in Council’s corporate name |
| Delegated officer/authority | Authority by Instrument of Delegation given under section 47(1) of the Local Government Act 2020 or by a resolution of Council |
| Discontinuance (in relation to a road) | The exercise of power under section 206, clause 3 of Schedule 10 of the Local Government Act 1989 which is effected by a notice published in the Government Gazette |
| Encroachment | An intrusion onto another’s property rights by building or occupation |
| Government road | A road established on a parish plan and held in the ownership of the Crown |
| Land | All land within the municipal boundary and/or other land owned or controlled by Council |
| LGA | Means the *Local Government Act* 1989 and Local Government Act 2020 |
| Market value | The value of land as determined by a certified practicing valuer |
| Obstruction | Placement of a fence, gate, equipment or any other matter or material to prevent lawful access to a road |
| Public benefit | Where Council and by extension the community receives an advantage (financial, transfer of obligations, liabilities or risks from Council to another party) as a result of the land transfer |
| Rights of way (ROW) | Includes such a road as defined in Section 3 of *the Local Government Act* 1989 |
| Road | A road as defined in the *Road Management Act* 2004  or as defined in section 3 of the Local Government Act 1989, includes but is not limited to, rights of way, street, easement of way or footpath. |
| Road Authority | The body responsible for the care, control or management of roads within a given jurisdiction |
| Road Register | Council’s declared public register of roads within the municipality as per the requirement set out in the *Road Management Act* 2004 |

# Associated documents

This policy is closely associated with the following Council documents, however amended or dated:

* 10-year Asset Plan 2022/23 to 2031/32
* Activity Centre Structure Plans – Coburg, Brunswick, Glenroy
* Asset Management Policy 2019
* Bluestone Infrastructure Policy 2023
* Community Engagement Policy 2023
* Human Rights Policy 2016-2026
* Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land 2009
* Land Purchase Policy 2018
* Merri-bek Council Plan and Council Action Plans
* Merri-bek Planning Scheme
* Merri-bek strategic operating and capital works budgets and initiatives
* Moving Around Merri-Bek Transport Strategy 2024
* Naming Merri-bek Places Policy 2013
* Open Space Strategy 2024
* Procurement Policy 2021 - 2025
* Public Lighting Policy 2018-2023
* Road Management Plan 2021-2025
* Sale of Property Procedures Policy 1997
* Strategic Property Framework 2023
* Street Numbering Policy 2023

Appendix 1

Road Discontinuance and Sale Process

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| **STEP** | **STAGE** | **TASK** |
| 1 | Initiation | All applications to discontinue a road/right of way and sale of land by private treaty must be made in writing before any substantive action is undertaken.  Applicant(s) are encouraged to ascertain the level of support by neighbouring property owners and provide evidence of support (e.g., joint letter /petition etc).  Acknowledgment of application sent. |
| 2 | Review | Check classification and identification of drainage or service assets.  Assessment against guiding principles including impact of discontinuation, undertake due diligence including title search, history, status and condition of right of way/road.  Site visit to check openings, service assets and feasibility. |
| 3 | Referral | Internal consultation with relevant Branches/Units to ascertain traffic, drainage, amenity, building code fire rating and planning or heritage considerations to determine whether there are any objections to the proposal.  External referrals with relevant service authorities to determine whether service authorities have any objections to the proposal given the existence of any assets in the road and if approved, whether any conditions and/or easements are required to be created in their favour. |
| 4 | Engagement | Consultation with affected/abutting property owners to determine level of support or otherwise for the proposal and interest in purchasing |
| 5 | Valuation | Market valuation of the land by a certified practicing valuer appointed by Council based on highest and best use. |
| 6 | Offer | If the proposal has merit, then proposal referred to Council’s external consultant for further investigation. The consultant will undertake necessary communication with the applicant(s), key stakeholders and affected persons and offers to purchase with abutting owners.  Report to commence statutory procedures and community engagement under s206 of the *Local Government Act* 1989. |
| 7 | Recommendation | Council to consider report to approve commencement of statutory procedures under the LGA. If approval is granted, the proposal shall be progressed. If not, then the proposal shall be abandoned, and applicant(s) and other affected persons advised accordingly. |
| 8 | Public notice | Arrange public notice and letters to affected property owners.  Administration of s223 submissions and preparation of report to a Hearing of Committee of Council (if required). |
| 9 | Decision & Gazettal | Final report to Council for decision.  If Council resolves to discontinue the road, a notice will be published in the Victorian Government Gazette. |
| 10 | Transaction | Preparation of instruments of transfer of land and creation and/or removal of easements as required.  Undertake all conveyancing requirements and facilitate the collection of sale of land costs and remaining administrative costs. |