

**Management report to Council**

**Agenda item 6.7**

**Proposed New Road Discontinuance and Sale Policy**

**Council**

**Presenter:** Angela Meinke, Manager Planning and Building

**30 August 2016**

**Purpose and background**

1. The purpose of this report is to seek approval of a proposed new Road Discontinuance and Sale Policy (the Policy) (Attachment 2) and the introduction of an application fee of \$2500 for each application for discontinuance.
2. The current Road Discontinuance and Sale Policy (Attachment 3) approved by Council in 1999 requires review under Council Action item 7.2.4 'Review the 1999 policy on how we sell surplus sub-scale land holdings'.
3. A review of the 1999 policy has been completed. The review included consideration of the sale of any other sub-scale land holdings, to establishing the standards to be applied to any such sale.

**Key issues**

4. The proposed new Policy allows the sale of Council owned land for market value, unless there is a specific Council resolution. There may be particular circumstances (e.g. community benefits) which Council may be of a mind to support. In these cases a report would be presented to Council to set an appropriate sale price.
5. The proposed new Policy allows the sale of private roads not shown on Council's Road Register under the *Road Management Act 2004* for a nominal value of \$1 inclusive of GST. In these circumstances the land is not in Council ownership and Council has not maintained or cared for the land. These parcels are often in the name of the original subdivider; however there is an expectation that Council will maintain this remnant land to Council's amenity standards, even although this has not been budgeted for.
6. It is proposed that where the sale of a private road in excess of 100m<sup>2</sup> is proposed, that the Delegate (sale) will recommend to Council a sale price having regard to the particular circumstances of that land.
7. Public consultation for the discontinuance and sale of land must be carried out in accordance with section 223 of the *Local Government Act 1989*.
8. There is currently no fee for an application to discontinue a road. It is proposed to set an application fee of \$2500 which is in addition to the reimbursement of Council's reasonable valuation, consultancy and legal costs associated with an application regardless of an outcome. This fee will generally cover officer time to assess and process any such request.

**Recommendation from management**

9. That Council:
  - 9.1. approves the new Road Discontinuance and Sale Policy
  - 9.2. approves the application fee of \$2500 per application for discontinuance

**Attachments:**

1. Supporting Attachment (page 2 of 8)
2. Proposed Road Discontinuance and Sale Policy (page 3 of 8)
3. Policy Road Discontinuance and Sale (page 7 of 8)

## Supporting Attachment

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### Legal

1. Pursuant to sections 206(1) and clause 3 of Schedule 10 of the *Local Government Act 1989* Council has the power to discontinue roads and, provided the land is not Crown land, sell the land.

### Finance

2. The Policy requires the reimbursement of Council's reasonable valuation, consultancy and legal costs associated with an application regardless of an outcome however does not consider officers time in accessing and processing an application. A fee of \$2500 per application will generally recover the costs for the officers' time to assess and process the applications.

### Conflict of interest

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

### Stakeholder consultation

4. No external consultation was undertaken as it is the review of a Council Policy.

### Relation to Council policy

5. Approval is being sought for a new proposed Road Discontinuance and Sale Policy to replace the existing policy.

### Environmental sustainability

6. This proposal has no significant impact on environmental sustainability.

# PROPOSED ROAD DISCONTINUANCE AND SALE POLICY

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## 2 Title of Policy

This is a policy which shall be known as the Road Discontinuance and Sale Policy.

### 2.1 Background

A policy is needed for the discontinuance and sale of roads and sale of surplus sub-scale land holdings.

### 2.2 Purpose

The purpose of this policy is to define standards to be applied to the discontinuance and sale of roads under the *Local Government Act 1989* within the City of Melbourne.

### 2.3 Scope and limitations on policy

The policy applies to all roads as defined in the *Local Government Act 1989* located in the City of Melbourne.

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

### 2.4 Definitions for the purposes of this policy and its procedures

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

**'Approved Development'** means a development approved under the MPS for land that includes a road that is required to be discontinued.

**'Delegate (Discontinuance)'** means a member of the Council staff occupying a position to which the powers, duties and functions of the Council to discontinue roads have been delegated or sub-delegated.

**'Delegate (Sale)'** means a member of the Council staff occupying a position to which the powers, duties and functions of the Council to sell land, have been delegated or sub-delegated.

**'Discontinuance'** means the exercise of power under clause 3 of Schedule 10 of the Act which is effected by a notice published in the Government Gazette.

'MPS' means the Melbourne Planning Scheme.

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

'sub-scale' means a parcel of land less than 100m<sup>2</sup> in area.

## 2.5 Legislative Context

The following provisions of the Act are relevant:

- s.206(1) (Power of Councils over Roads)
- clause 3 (Power to discontinue Roads) of Schedule 10 (Powers of Councils over Roads)
- s.207A (Submissions under section 223)
- s.223 (Right to make submissions)
- s.207B (Certain land used, or to be used for Roads to vest in Council)
- s.207C (Sewers, pipes, wires etc. of public authorities not affected)
- s.189 (Restriction on power to sell land).

Relevant provisions of other Acts include:

- s.43 Planning and Environment Act 1987 (Closure of roads on Crown land)
- s.44 Planning and Environment Act 1987 (Closure of roads on land other than Crown land).

### Summary

Conditional on the outcome of public consultation (see s.223 of the Act), Council has the power and complete discretion whether to discontinue a road within its municipality. All actions must be lawfully and properly carried out with a special focus on public consultation and the impartial consideration by Council of any submissions received in that process.

The discontinuance provisions of the Act can be applied to all roads within the scope and limitations of this policy, regardless of their size, location, importance, underlying ownership and public or private status.

Gazetting of a notice of discontinuance in the Victoria Government Gazette frees the land from all private and public rights and encumbrances save for certain rights and powers of public authorities.

Unless the subject road is on Crown land, the gazetting vests the land in Council and Council can subsequently sell the land or retain it for municipal purposes.

The sale of land resulting from discontinuance must undergo a public notification process under the Act but is not open to submissions. If it is intended to sell a road that is proposed to be discontinued, this intention must be identified in the notice proposing the discontinuance.

## 2.6 Policy

### **ROAD DISCONTINUANCE**

The discontinuance of a road is viewed as a significant action because of the potential negative impacts the loss of legal access can cause parties and the public.

It is the policy of the Council that:

- A road should not be discontinued without assessing:
  - if that action results in an outcome contrary to the interests of the general public
  - the requirements of the emergency service providers and statutory service authorities
  - the effects on Council infrastructure and services

- the effects on abutting properties and buildings and their owners and occupiers
- the historic significance of the road (refer to comments below under the MPS).
- Roads should only be closed under the provisions of the *Planning and Environment Act 1987* when the closure is associated with an overall redevelopment or rezoning of land supported by the Council.

#### Development Approvals and Road Discontinuance

Council has the discretion of refusing a road discontinuance and/or sale regardless of the existence of an Approved Development or related building approval. It is particularly important a developer is aware of this at an early stage where the Minister for Planning is the responsible authority and the Council does not support the proposed development.

Roads which are Class 1; Class 2 and Class 3 Lanes under clause 22.20 of the MPS (*CBD Lanes Local Planning Policy*), or those having similar recognition in any subsequent review, must not be discontinued unless the discontinuance accords/aligns with an approved development.

A discontinuance approval does not have to require that an approved development is completed but must ensure critically related conditions are met. For example Clause 22.20 (CBD Lanes) of the MPS strongly opposes the closure of a Class 3 Lane unless it results in an improved replacement lane. A discontinuance approval of the Class 3 lane must contain conditions to ensure the replacement lane is provided.

#### Consultation

All consultation shall as a minimum meet the public notice requirements of the Act and comply with corporate standards.

A road on Crown land is not to be discontinued if the resultant land is to be sold off to a non-government entity, without the prior agreement of the appropriate state government selling department.

A road on Crown land is not to be discontinued as a precursor to reservation under the *Crown Land (Reserves) Act 1978* without the in principle agreement of the appropriate state government department.

#### Payment of costs and application fee

An applicant must pay the applicable application fee, and must meet all of the Council's reasonable valuation, consultancy and legal costs associated with an application, regardless of an outcome.

### **SALE OF LAND**

#### Council Roads

Any land resulting from the discontinuance of a Council road which is to be sold by Council, is to be sold at market value with a potential mark up of up to 20 per cent with the other conditions of sale being set by Delegate (Sale) and Council's Chief Legal Counsel. The Delegate (Sale) may recommend to Council a sale at less than market value in extenuating circumstances.

An internal valuation will be obtained to determine the market value and if the valuation is greater than \$500,000 a second external valuation must be obtained with the higher valuation being used to set the market value for the sale. Council reserves the right to select the external valuation firm.

On some occasions it may be appropriate for an indicative sale price of the land to be sold to be given to the possible purchaser prior to seeking any bank guarantee or security deposit, to decide if they wish to commence the public notice and submission process.

Private Roads

Any sub-scale land (<100m<sup>2</sup>) resulting from the discontinuance of a private road not shown on Council's Road Register under the *Road Management Act 2004* will be sold at a nominal value of \$1 inclusive of GST.

The sale of any sub-scale land (<100m<sup>2</sup>) holdings which the Delegate (Sale) determines are surplus to Council requirements shall be sold in accordance with this Policy.

In the event that a private road which is greater than 100m<sup>2</sup> in area is to be sold, the Delegate (Sale) will recommend to Council a sale price having regard to the particular circumstances of the sale.

Pre-sale conditions

Unless with the prior approval of the Council's Chief Legal Counsel, no road or part of a road shall be discontinued before:

- a binding contract of sale of the land has been entered into between the Melbourne City Council as future vendor and the purchaser
- a bank guarantee or security deposit is held to ensure any later commitments of the purchaser will be met following the sale
- all pre-requirements of the approval, including those relevant to any Approved Development, have been met or have been agreed to be met to the relevant Council officer's satisfaction.

**2.7 Procedures**

The Delegate (Discontinuance) and the Delegate (Sale), subject to mutual consultation, may introduce and from time to time amend procedures and protocols associated with this policy.

**2.8 Supporting Material**

This section lists any additional information, materials forms etc. that relate to the policy/procedure.

Statutes including the Act <http://www.legislation.vic.gov.au/>

Local Government Best Practice Guidelines for the Sale and Exchange of Land

Supporting Procedures DM #7146156

Process Map DM #9898894

**2.9 Governance**

This section must be completed prior to obtaining Director approval.

Policy Owner	Manager Planning and Building
Docs Number	DM #6761465
Last Revised Date	Not Applicable
Next Review Date	Five years from implementation of policy

**2.10 Document Approvals**

Name	Title	Version	Date Approved	Signature

## **POLICY**

### **ROAD DISCONTINUANCE AND SALE**

1. Council only favours the discontinuance and sale of roads when this leads to a public benefit and/or supports appropriate development.
2. Before consideration is given to road discontinuance, a development proposal for the site, which proposes to incorporate the road or lane, must be submitted and approved. This is not however required for roads outside of the CBD Laneway Study area, if the Group Manager Development and Statutory Services deems the proposal is of a minor nature and would achieve a public benefit in improving security, safety, health or amenity issues.
3. Central city roads that are graded A in Council's CBD Laneway Study cannot be discontinued and sold.
4. Lands subjected to a road discontinuance shall be purchased at a price not less than that determined by a registered valuer. Council will not however require payment (other than reimbursement of Council's associated reasonable costs) for clearly privately controlled roads currently in the same ownership as other significant abutting lands. In such a case the application would need to be by, or on behalf of, the actual title owner of the road.
5. No road shall be discontinued and sold without first assessing:
  - 5.1. the quality and overriding public benefit of an applicable overall development;
  - 5.2. the requirements of the emergency service providers and the statutory service authorities;
  - 5.3. the effects on Council infrastructure and services including garbage collection and cleansing services;
  - 5.4. the effects on abutting and relevant properties and buildings and on the rights of owners and occupiers of those properties, together with the rights of the public (where applicable);
  - 5.5. the historic significance of the road, its paving and its pattern and the road's present and potential contribution to the pedestrian and vehicle networks. Reference shall be made (where appropriate) to the Council's CBD Laneway Study as set out in the Melbourne Planning Scheme and City Plan;
  - 5.6. the appropriateness of any proposed replacement pedestrian, vehicle or servicing arrangements and their consistency with Council policy;
  - 5.7. strategic planning implications and heritage issues; and

- 5.8. any other matter relevant to the proposal under consideration.
6. No road shall be discontinued and sold without first receiving:
  - 6.1. an unconditional bank guarantee for a sum sufficient to more than cover an estimate by Council of all associated costs likely to be incurred by Council, regardless of whether the application is successful or not, or is withdrawn;
  - 6.2. a written undertaking from the owner of land abutting the road to indemnify Council against all claims in respect of the discontinuance and sale of the road, including all legal and other costs; and
  - 6.3. ten (10) copies of an A4 plan, prepared by a licensed surveyor, showing the extent of the road to be discontinued.
7. No road shall be discontinued and sold, unless clearly privately controlled currently in the same ownership as abutting significant lands, without first receiving a written undertaking from the owner of land abutting the road, to purchase the road at the market price not less than that determined by a registered valuer, should Council resolve to discontinue and sell the road.
8. The consultation requirements of the Local Government or the Planning and Environment Acts must be met, including the advertising of a proposal in at least two newspapers and written notice being forwarded to the owners and occupiers of all properties abutting the subject portion of road and to any other persons likely to be affected by the proposal. A notice of the proposal is also to be placed at the entrance to the road. All objectors will be considered by a Special Council Committee and a report presented to Council by the Committee together with recommendations.
9. The owner of the land abutting the road giving Council a bank guarantee, to an amount relative to the nature of the road discontinuance and the abutting properties, buildings and development, to ensure site consolidation and/or compliance with other conditions for approval of the proposal.
10. The owner of the land abutting the road must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987 with Council, to ensure compliance with conditions for approval of the proposal. Council will incur no related costs and the agreement should be registered on the title to the abutting land.
11. In the case of a related development, the approved road closure shall not occur until bone fide contracts have been entered into to erect the approved development.