

# Council Policy

<b>Council policy title:</b>	<b>Discontinuance and sale of Right of Ways, Roads, and Reserves Policy</b>
<b>Council policy owner:</b>	Director Corporate Services
<b>Adopted by:</b>	Bayside City Council
<b>Date adopted:</b>	24/4/2018/10.18
<b>Scheduled review:</b>	April 2022
<b>Document Reference:</b>	DOC/18/44650

## 1. Policy intent

To ensure that roads, right of ways (ROWs) and reserves that are no longer required to be kept under Council care and management for access, drainage or strategic purposes can be legally sold subject to compliance with statutory requirements.

## 2. Policy purpose

To ensure that Council has a consistent and equitable approach to dealing with the discontinuance and sale of roads, right of ways and reserves.

The Policy establishes a framework to assist the Council in the exercise of its statutory functions, duties and powers to discontinue roads and right of ways pursuant to section 206 of the *Local Government Act 1989* (Act), remove the reserve status within the municipal district under section 24A of the *Subdivision Act 1988*, and sell of Council land pursuant to section 189 and 223 of the Act.

It provides direction on whether the discontinued roads or former reserves should be sold, or retained and transferred to Council for strategic or municipal purposes.

The achievement of the objectives of this Policy will protect roads, ROWs and reserves for use by the wider community when there is an ongoing need for them.

This policy has been developed in reference to relevant legislation and the 'Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land' dated June 2009.

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

## 3. Glossary - Definitions and Abbreviations

Definitions of special terms and abbreviations within the policy document.

Term	Meaning
<b>RIGHT OF WAY (ROW)</b>	is a road as defined in section 3 of the <i>Local Government Act 1989</i> .

<b>ROAD</b>	is as defined in Section 3 of the <i>Local Government Act 1989</i> . The term “road” includes, but is not limited to, a right of way, a street or a footpath etc.
<b>RESERVE</b>	is a drainage and other reserve not set aside for other recreational purposes.

#### 4. Scope

Roads, ROWs and reserves that are not required to be retained in Council ownership can be considered to be discontinued, or the reserve status removed and sold in accordance with this Policy.

#### 5. Policy statement

All land that is required for access, drainage purposes or other strategic purposes will be retained and where required ensure it is open and available to the public. Where land is no longer required to be retained in Council care and management to achieve these outcomes or the historic purpose means land is no longer required Council may elect to sell the land subject to completion of statutory procedures.

When land is no longer required to be cared and managed by Council, the achievement of the objectives of this Policy will:

- (i) Reduce Council’s long-term financial and legal liability for roads, ROWs and reserves (e.g. maintenance, cleaning and public liability);
- (ii) Improve local amenity for Bayside residents (e.g. increasing the security of property by the elimination of access points);
- (iii) Formalise ownership of roads and ROWs (following discontinuance) and reserves (following removal of reserve status) providing a clearer control of the land and allocation of obligations; and
- (iv) Maximise additional revenue generated from:
  - (a) Funds from land transfers;
  - (b) Reduction in legal and financial liability; and
  - (c) Increase rate revenue.

The following general principles apply to roads, ROWs and reserves: -

- (i) Land required for the following uses will be retained for that ongoing need: -
  - An ongoing need for access, both vehicular and pedestrian;
  - Is constructed and maintained as a road or ROW by Council and is still required for that purpose;
  - Has strategic value to Council;
  - Provides recreational linkages or linked pathways;
  - Is required to increase existing parkland;
  - Is required for drainage or flood mitigation or location of other services;
  - Is required to be preserved for significant vegetation; or
  - Is generally required for municipal purposes.
- (ii) Unauthorised occupation of roads or ROWs or reserves is prohibited and Council will take steps to stop the illegal occupation.

- (iii) Council will encourage the sale of such land that is not being used for pedestrian or vehicular access or is no longer required for other strategic or public use.
- (iv) Council will only sell such land holdings to abutting property owners. In circumstance where one abutting property owner does not wish to purchase the land then Council will offer the whole parcel of land to the adjoining property owner.
- (v) Generally, all abutting owners will be given an equal opportunity to purchase such land holdings that abut their property. Accordingly, officers will attempt to divide land equally. However, Council will acknowledge and give preferential allocation rights to abutting property owners who can demonstrate continuous exclusive occupation of the land (i.e. occupation that could otherwise give rise to an adverse possession claim).
- (vi) Council may take steps to remove such unauthorised occupation of roads, ROWs and reserves. Where Council resolves not to discontinue and/or sell the land, steps may be taken to ensure that the land becomes and remains accessible for the purpose for which it was set aside, including directing removal of any obstructions or buildings from the land in accordance with clause 207 and section 11 of the Act, and all costs associated with the removal to be paid by the occupier.
- (vii) Council will seek to optimise value from the sale of land and will pass on all costs associated with the transfer of the land.
- (viii) Council reserves the right to retain any such land holdings once Council takes title to such land if it is seen to be appropriate. This land may be retained to: -
  - Meet a strategic need,
  - Protect Council's rights of ownership, or
  - Sell at some point in the future in accordance with this Policy.
- (ix) Council has the right to place an easement, covenant, or create an easement on or over the land parcel in order to protect existing rights or future requirements. If there is a requirement by statutory authorities to relocate any assets located underneath the subject land (e.g. drains), all costs will be borne by the purchaser.
- (x) All legislative requirements for the discontinuance of roads and ROW's and the removal of reserve status and the sale of such land are met, including appropriate consultation and valuation processes;

### **5.1 Assessment of sale prices**

Revenue achieved from the sale of discontinued roads or former reserves will be held in a fund and utilised for the development of Council's land holdings or the purchases of additional land for open space.

The land will be sold at market value as determined by a qualified valuer, contracted to Council, taking into account relevant criteria including the following:

- (i) The land area and dimensions of the land;
- (ii) The increase in the value of any property which occurs as a result of the transfer of the extra land;
- (iii) The potential the abutting property has for redevelopment as a result of the transfer of land; and
- (iv) Any easements, encumbrances or other assets retained on the land as a requirement of Council or other statutory authorities.

If a property owner can demonstrate continuous exclusive occupation of the road or reserve for 15 years or longer and may have adverse possession rights, consideration may be given to discounting the purchase price by up to 50% of the current market value.

Council may, at its discretion, decide to waive fully or partially the valuation component of the land parcel being transferred if it deems the land transfer will serve some “public purpose”. Such action will require a resolution of Council.

## 5.2 Costs

All costs associated with the discontinuance and sale of roads or right of ways or the sale of reserves incurred by Council will be paid or shared by the applicant/s regardless of the outcome.

These costs include but are not limited to: -

- Survey costs
- Legal fees and disbursements;
- Title Registration costs; and
- Relocation of fences.

An application fee to cover initial assessment, valuation and administration associated with a proposal under this policy will be implemented to ensure Council does not incur excessive costs associated with speculative processes. This fee will be set annually as part of Council’s fees and charges.

## 5.3 Replacement costs

The relocation or replacement costs of any assets within a section of land will be borne by the purchaser. These will include the following: -

- Statutory authority assets such as those belonging to water, gas or telecommunications organisations.
- Bluestone pitchers (if any), or other re-useable materials as these remain the property of Council.
- Replacement drainage or new storm water drainage, if required.

## 5.4 GST

In accordance with the provisions of the *Goods and Services Tax Act* 1999, the sale of Council property, including the sale of discontinued ROWs, roads and the sale of former reserves, will attract GST. This obligates Council to ensure that GST is added on to the sale price or that the sale price is inclusive of GST.

## 5.5 Terms payment

The full purchase price will be paid to Council at the time of settlement, except at the discretion of the responsible officer when, in special circumstances, the terms may be extended to allow equal payments over a period of time, not exceeding three years. In relation to terms payments, an additional service charge will be assessed to cover any administration costs. The transfer of land will not be passed on to the purchaser until the purchase price plus any costs or additional amounts are paid in full.

## 6. Monitoring, evaluation & review

The Manager Commercial Services is responsible for ongoing monitoring and review of the effectiveness of this Policy. Sales of discontinued roads and ROW's and former reserves are reported monthly through budget review processes. Reporting will be incorporated into an Annual Property Performance report noting the type of land being sold and the sale prices.

The Policy will be reviewed every four years or on significant changes to legislation or Council objectives related to property management.

The performance indicators related to this policy are:

- Percentage of processes where an application fee has been accepted that are completed within eight months (90%)
- Percentage of cost recovery (100%).

## 7. Roles & Responsibilities

The Director Corporate Services will be responsible for the implementation and management of this Policy and the relevant procedures.

An instrument of delegation adopted by Council provides delegated authority to the Director Corporate Services.

## 8. Related documents

<b>Legislation</b>	<ul style="list-style-type: none"><li>▪ <i>Local Government Act 1989</i></li><li>▪ <i>Subdivision Act 1988</i></li><li>▪ <i>Limitations of Actions Act 1958</i></li><li>▪ <i>Transfer of Land Act 1958</i></li><li>▪ <i>Road Management Act 2004</i></li></ul>
<b>Policies</b>	
<b>Strategies/Plans</b>	Property Strategy
<b>Procedures/Processes</b>	Discontinuance and sale of Right of Ways, Roads, and Reserves
<b>Other</b>	Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land' dated June 2009.

**Please note:** This policy is current as at the date of approval. Refer to Council's website ([www.bayside.vic.gov.au](http://www.bayside.vic.gov.au)) to ensure this is the latest version.