



13.4 ROAD DISCONTINUANCE AND SALE OF ROADS POLICY UPDATE

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1. PURPOSE

- 1.1 To present the results of the internal review of the Road Discontinuance and Sale of Roads Policy 2011 and seek approval for the revised Road Discontinuance and Sale of Roads Policy.

2. EXECUTIVE SUMMARY

- 2.1 The City of Port Phillip geographically is the second smallest council in Victoria covering an area of 20.70km² with 266Km of roads managed by the Council. However, the road network is complicated by a large number of rights of way and laneways that were developed to satisfy a historical need and were documented in early plans of subdivision.
- 2.2 In most cases this land is still required for access or other strategic purposes and should remain open to the public however, Council may support the discontinuance of a road within its municipality if it is considered in the best interest of the community.
- 2.3 Unless the subject road is on Crown land, once discontinued, the land vests in Council and Council can subsequently sell the land from the discontinued road or retain it for municipal purposes.
- 2.4 Any discontinuance and sale of a road is to be carried out according to the provisions of Clause 3 of Schedule 10 of the *Local Government Act 1989* and Council's Road Discontinuance and Sale of Roads Policy.
- 2.5 The Road Discontinuance and Sale of Roads Policy (Policy) was developed in 2011 to provide a decision-making framework to ensure that those roads and laneways reasonably required for public access remain open to the public.
- 2.6 Given the age of the Policy, Officers recently undertook a review of the current Policy and accompanying procedures to identify any required amendments.
- 2.7 While case law over the last few years has provided further guidance on how to interpret the legislation around road discontinuances, very little has changed since the introduction of the Policy in 2011.
- 2.8 As such, the internal review identified that the policy doesn't need any significant changes and Officers are proposing only minor amendments to the Policy including additions to provide further clarity over current processes and removals to support alignment with legislation.
- 2.9 As the regulations relating to roads and road discontinuances is complex and is easily misinterpreted, a standard work procedure for road discontinuances has also been



developed to support the consistent application of the Policy and ensure compliance with laws and regulations relating to road discontinuance matters.

- 2.10 Officers are seeking approval from Council for the adoption and implementation of the revised Road Discontinuance and Sale of Roads Policy.

3. RECOMMENDATION

That Council:

- 3.1 Approves the adoption of the revised Road Discontinuance and Sale of Roads Policy 2022.
- 3.2 Delegates authority to the Chief Executive Officer to make amendments to the Road Discontinuance and Sale of Roads Policy 2022 to correct any minor changes that do not materially alter its intent.

4. KEY POINTS/ISSUES

Background

- 4.1 The City of Port Phillip is geographically the second smallest council in Victoria covering an area of 20.70km² with 266Km of roads managed by the Council.
- 4.2 Council, as a recognised Roads Authority, has a clear responsibility under the *Road Management Act 2004* to effectively manage the local municipal road network to ensure that a network of roads is provided for the movement of persons and goods as part of an integrated transport system and that road reserves are available for other appropriate uses.
- 4.3 The road network within the City of Port Phillip includes rights of way and laneways that were developed to satisfy a historical need and were documented in early plans of subdivision.
- 4.4 In most cases this land is still required for access or other strategic purposes and should remain open to the public however, Council may support the discontinuance of a road within its municipality if it is considered in the best interest of the community.
- 4.5 The discontinuance of a road removes all private and public encumbrances from the subject land, saved for certain public authority rights, providing a permanent closure of the road.
- 4.6 Unless the subject road is on Crown land, once discontinued, the land vests in Council and Council can subsequently sell the land from the discontinued road or retain it for municipal purposes.
- 4.7 Any discontinuance and sale of a road is to be carried out according to the provisions of Clause 3 of Schedule 10 of the *Local Government Act 1989* and Council's Discontinuance and Sale of Roads Policy.

Current Policy

- 4.8 The Discontinuance and Sale of Roads Policy (Policy) was developed in 2011 to provide a decision-making framework to ensure that those roads and laneways reasonably required for public access remain open to the public.



4.9 In addition, the Policy intends to:

- Reduce Council's long-term maintenance costs for parcels of land that are no longer required for general public use;
- Reduce Council's long-term financial and legal liability for roads (e.g. maintenance, cleaning and public liability);
- Improve the utility of land that is not otherwise serving a useful purpose;
- Improve local amenity for residents of the City of Port Phillip;
- Provide a mechanism for the formalisation of the occupation of parcels of land by adjoining owners;
- Provide an equitable return to all ratepayers of the City of Port Phillip from the disposal of land from discontinued roads to private individuals.

4.10 The Policy does not provide direction on temporary road closures, road permits or licencing of land as these are covered by other council policies and frameworks.

Policy Review

4.11 Given the age of the Policy, Officers recently undertook a review of the current Policy and accompanying procedures to identify any required amendments.

4.12 While case law over the last few years has provided further guidance on how to interpret the legislation around road discontinuances, very little has changed since the introduction of the Policy in 2011.

4.13 Therefore, Officers are proposing the following minor amendments to the Policy:

- **Formatting** - Update the Policy template to align with Council's standard policy template including adding in expected policy outcomes, key definitions and clear roles and responsibilities.
- **Scope** - Amend the scope of the Policy to ensure clarity over the boundaries of the Policy.
- **Additional retention criterion** – Update the Policy to clarify that roads will be retained if the sale will result in a landlock situation. While Council must consider balancing the competing needs of road retention and sale, Officers have identified a number of road parcels that have been landlocked over the years which are difficult and costly for council to maintain. It would be prudent for Council to avoid this unnecessary cost in the future.
- **Removal of adverse possession** - Recent legal advice has confirmed that adverse possession does not apply to council assets and the Policy should be updated to remove any confusion with legislation.
- **Sale requirements** – Answers to some of the more common questions Council receives around sales should be included to increase transparency. This includes calling out:
 - That under legislation, the land will vest in Council.
 - The full purchase price of the land is to be paid at settlement.
 - That GST is applied to the sales price and the reason why this occurs.



- How Council will manage allocation of land between abutting owners.
- The link between this Policy and the Property Policy as once the road is discontinued it becomes a land parcel.
- **Amendment to sale conditions** - Given the scarcity of bluestone pitchers, a section has been added to allow the applicant to either purchase the pitchers or pay for their removal. This aligns with previous policy positions and recent Council approvals.
- **Valuation and sales price** - Amendments have been made to the valuation and price sections to remove the ability for negotiation as this can be very hard to implement consistently. In addition, clarity has been provided on what the market value will be based on within the definitions section to provide transparency and consistency in approach.
- **Application costs** – The costs listed in the Policy have been removed and instead we have referred to fees being considered annually within the Fees and Charges Schedule. Council have not charged the current fees listed for a number of years as much of the process is currently outsourced and charged directly to the applicant from the contracted party.

4.14 All amendments to the Policy have been marked up in red in the draft document in Attachment 1.

4.15 As the regulations relating to roads and road discontinuances is complex and is easily misinterpreted, a standard work procedure for road discontinuances has also been developed to support the consistent application of the Policy and ensure compliance with laws and regulations relating to road discontinuance matters.

4.16 Officers are seeking approval from Council for the adoption and implementation of the revised Road Discontinuance and Sale of Roads Policy.

5. CONSULTATION AND STAKEHOLDERS

5.1 The review was informed by ongoing feedback from applicants and internal teams within Council together with guidance provided by recent case law and legal advice.

6. LEGAL AND RISK IMPLICATIONS

6.1 The current Policy is outdated and does not necessarily align with current legislation.

6.2 The revised policy and accompanying standard work procedures seeks to reduce the risk of legislative breaches by supporting a transparent, equitable and consistent decision-making process for road discontinuance matters.

7. FINANCIAL IMPACT

7.1 The proposed minor changes to the Road Discontinuance and Sale of Roads Policy will not have any financial implications.

8. ENVIRONMENTAL IMPACT

8.1 The Policy encourages improved utility of land that is not otherwise serving a useful purpose.



9. COMMUNITY IMPACT

9.1 The minor amendments proposed to the Policy will provide further transparency over the key considerations in making decision on road discontinuance matters.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Liveable Port Phillip: Port Phillip is a great place to live, where our community has access to high quality public spaces, development and growth are well managed, and it is safer and easy to connect and travel within.

10.2 Well Governed Port Phillip: Port Phillip is a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

11. IMPLEMENTATION STRATEGY

TIMELINE

11.1 Following adoption, the revised Road Discontinuance and Sale of Roads Policy will be updated on both the intranet and internet.

COMMUNICATION

11.2 Discontinuance and Sale of Roads Policy provides a decision-making framework to ensure that those roads and laneways reasonably required for public access remain open to the public.

11.3 Minor amendments have been made to the Policy to further enhance transparency within the decision making process.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

- 1. Road Discontinuance and Sale of Roads Policy DRAFT v2.0**