



# Road Discontinuance and Sale of Roads Policy

DRAFT v2.0 March 2022



## Policy governance

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**Responsible Service/Department:**

Property and Assets

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**Adoption authorised:**

Ordinary Meeting of Council

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**Stakeholder review and engagement:**

Asset Management and Property Operations

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**Relevant Legislation:**

As attached at the end of this document

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**Associated Strategic Direction #:**

Well Governed Port Phillip

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**Associated instruments:**

As attached at the end of this document

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**Supersedes:**

Road Discontinuance and Sale of Roads 2011



**Review History:**

Name	Content Manager File Reference	Date	Description of Edits
<b>Road Discontinuance and Sale of Roads 2011</b>	N/A	2011	Initial Release
<b>DRAFT Road Discontinuance and Sale of Roads 2022</b>	TBD	April 2022	Update of formatting and minor amendments to policy to align with process and legislation.



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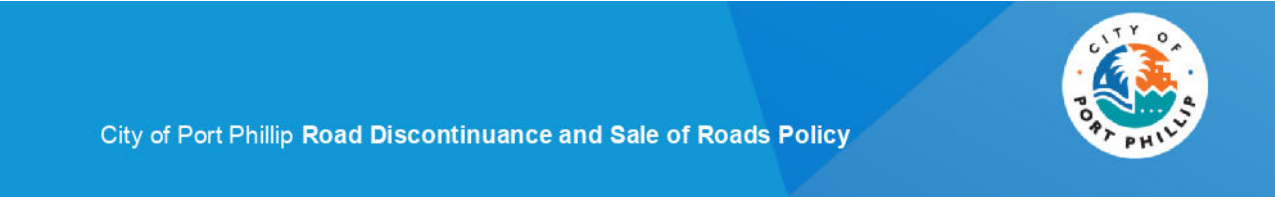
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## Purpose

The Council owns and controls property as custodian on behalf of the community. The Council is committed to the responsible management of Council’s assets and resources.

Council has wide powers in relation to roads.

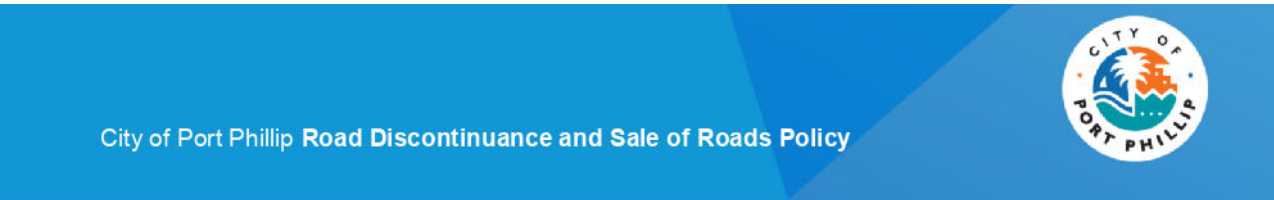
This policy sets out the Council’s approach to the discontinuance and sale of roads and laneways to ensure that those roads reasonably required for public access remain open to the public and those not generally required for public access may be discontinued and the land sold.

## Outcomes

### Definitions

Table 1: Definitions of terms

Term	Definition
<b>Council</b>	Port Phillip City Council
<b>Discontinuance</b>	The discontinuance of a road removes all private and public encumbrances from the subject land, saved for certain public authority rights. This can have significant impacts on the access, servicing, building regulation compliance and development potential of other lands and buildings.
<b>Encroachment</b>	This is an intrusion on to another’s property rights by building or occupation.
<b>Market Value</b>	This is the value as determined by a qualified valuer taking into account: <ul style="list-style-type: none"> <li>• The land area and dimensions of the land</li> <li>• The highest and best potential use of the land</li> <li>• Increase in value to any abutting property as a result of the transfer of the extra land – as a before and after valuation</li> <li>• The potential for, or the enhancement of, an abutting property for redevelopment as a result of the transfer of land</li> <li>• 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.</li> </ul>
<b>Obstruction</b>	This is the placement of a fence, gate, equipment or any other matter or material to prevent lawful access to a road.

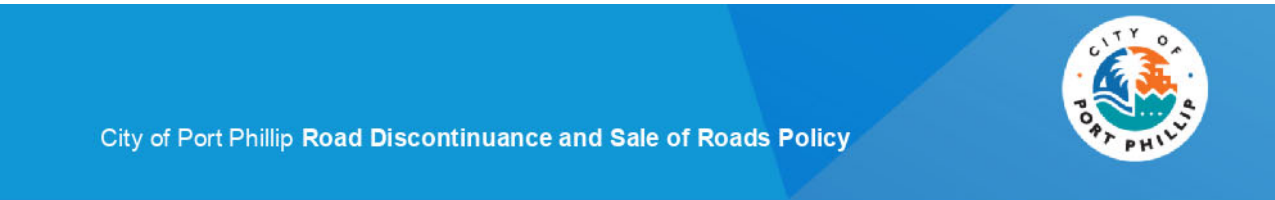


Term	Definition
<b>Road</b>	<p>This has the same meaning as set out in Section 3(1) of the Local Government Act 1989. A Road for the purposes of Section 3 of the Local Government Act 1989 includes:</p> <ul style="list-style-type: none"> <li>• a street;</li> <li>• a right of way</li> <li>• any land reserved or proclaimed as a street or road under the Crown Land (Reserves) Act 1978 or the Land Act 1958 ;</li> <li>• a passage;</li> <li>• a cul de sac;</li> <li>• a by-pass;</li> <li>• a bridge or ford;</li> <li>• a footpath, bicycle path or nature strip;</li> <li>• any culvert or kerbing or other land or works forming part of the <u>road</u></li> <li>• a public road under the Road Management Act 2004 which includes:                         <ul style="list-style-type: none"> <li>a) a freeway;</li> <li>b) an arterial road;</li> <li>c) a road declared as a public highway by Council publishing a notice in the Government Gazette under section 204(1) of the Local Government Act 1989</li> <li>d) a road to which under 17(3) applies being a road in respect of which the road authority has made a decision that the road is reasonably required for general public use (section 204(2) of the Local Government Act 1989)</li> <li>e) a non-arterial State road or municipal Road declared under section 14(1) by Department of transport.</li> </ul> </li> </ul>
<b>Road Authority</b>	The body responsible for the care, control or management of roads within a given jurisdiction
<b>Road Register</b>	Council's declared public register of roads within the municipality as per the requirement set out in the Road Management Act 2004.

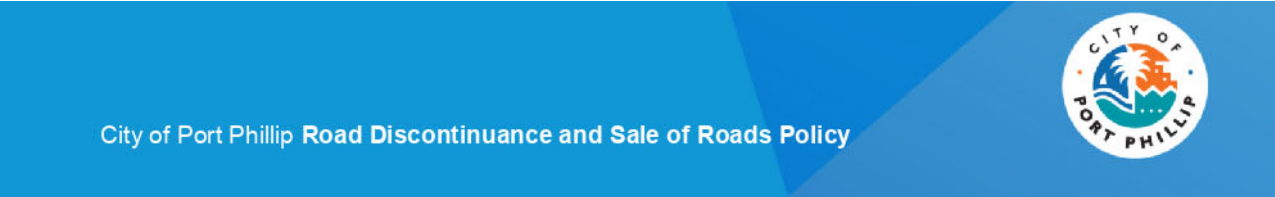
## Responsibilities

Table 2: Responsibilities of roles

Role	Responsibility
<b>Council</b>	<ul style="list-style-type: none"> <li>• Determining whether a Road is reasonably required for general public use and whether it should be</li> </ul>



Role	Responsibility
	<p>discontinued including whether subsequent land is to be sold, its cost and allocation (as required).</p> <ul style="list-style-type: none"> <li>Reviewing and approving the Road Management Plan</li> </ul>
<b>Executive Leadership Team</b>	<ul style="list-style-type: none"> <li>Review and approve amendments to the Road Discontinuance Policy to ensure they reflect the service delivery priorities of Council.</li> </ul>
<b>General Manager Customer, Operations and Infrastructure</b>	<ul style="list-style-type: none"> <li>Provide oversight in the implementation and review of the Road Discontinuance Policy, Road Management Plan and accompanying procedures.</li> <li>Ensure that the management and governance of roads is integrated into corporate governance including financial management, reporting and risk management.</li> </ul>
<b>Executive Manager, Property and Assets</b>	<ul style="list-style-type: none"> <li>Lead the development, monitoring and review of the Road Discontinuance Policy and supporting procedures.</li> <li>Assess objections to road discontinuance proposals prior to entering the road discontinuance process.</li> <li>Ensure the organisation has appropriate capability to deliver on this the policy and accompanying procedures.</li> </ul>
<b>Head of Property and Workplace Operations</b>	<ul style="list-style-type: none"> <li>Oversee the administrative functions to ensure implementation, adherence and ongoing management of the Road Discontinuance Policy and accompanying procedures</li> <li>Ensure discontinuance tracker, due diligence reporting and other obligations relating to this policy are being delivered in line with the service delivery priorities of Council.</li> </ul>
<b>Head of Asset Management</b>	<ul style="list-style-type: none"> <li>Maintaining an up to date Public Road Register as required by the Road Management Act 2004 and coordinate a full review of Council's Road Management Plan every four years.</li> </ul>
<b>Team Leader, Property Operations</b>	<ul style="list-style-type: none"> <li>Undertake the administrative functions required to facilitate a road discontinuance in line with the Road Discontinuance Policy and accompanying procedures.</li> </ul>



Role	Responsibility
<b>Roads Asset Planning Engineer</b>	<ul style="list-style-type: none"> <li>Undertake the administrative functions required to manage the Road Register and Road Management Plan in line with the Road Management Act 2004 including the identification, addition and removal of Roads as required.</li> </ul>

### Scope

This policy sets out the conditions and principles under which a Road may be discontinued, and the land sold.

This Policy is applicable to:

- All Councillors, Council Officers and other persons involved in these processes
- All contracts relevant to the processes
- All roads and road reserves under Council’s management, including Council owned property and Crown land managed by Council.

Unless otherwise stated, this policy assumes compliance with all relevant legislation, policies, and best practice guidelines.

This policy does not relate to:

- the closure of roads to traffic under Schedule 11 of the Act
- the sale and disposal of assets that are not Roads
- ad hoc permits over Roads
- projections over Roads
- licencing of land

### Discontinuance Principles

As part of the road network, rights of way and laneways were developed to satisfy a historical need and were documented in early plans of subdivision.

In most cases this land is still required for access or other strategic purposes and as such Council will ensure the land remains open and available 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.**

### Governance Statement

Council will facilitate the discontinuance and sale of roads where;





- appropriate consultation has occurred;
- legislative requirements have been met; and
- it is considered that road discontinuance and sale is in the best interests of the wider community.

Where Council has undertaken the statutory procedures for road discontinuance and considered any submissions received it may decide to proceed with road discontinuance (and subsequent sale of land) for all or any part of the subject Road or to reject the proposal in its entirety.

## Retention of Roads

Council will retain public ownership of Roads where;

- They continue to add character to the public realm
- They have a future strategic purpose or there may be a future opportunity to activate the laneway
- They may improve the walkability and permeability of the public realm
- They improve the amenity of the area
- They provide options for improved environmental outcomes
- There is balances required between competing needs (private vs public ownership)
- The historical element of the laneway continues to be celebrated.
- The intent or outcome of the sale of a section of a right of way will be to restrict the sale of further sections of that right of way or create a 'landlock' situation.

## Discontinuance of Roads

The Council may support the discontinuance of a Road (and any subsequent sale of land) for reasons including the following;

- the road is not required for general public use
- it may result in amenity improvements particularly where the land becomes a haven for anti-social behaviour or a place to dump rubbish;
- it may result in a safer and more secure neighbourhood by reducing access points to properties;
- it may result in a better use of land;
- Council, on behalf of the community, may obtain a fair and equitable return on land that was originally set aside for a public purpose;
- Council will reduce its maintenance burden;
- it may rectify an anomaly which will result in greater certainty of property ownership and associated rights.
- the land has no strategic value to Council
- the road has no heritage value
- the road is not required to maintain the urban character of the area
- the road is not required for access to other premises.

## Objections



In the event that an objection is received to a proposed road discontinuance prior to the commencement of statutory procedures, the **General Manager Customer, Operations and Infrastructure** will make an assessment of the merits of the proposal.

The **General Manager Customer, Operations and Infrastructure** may decide as follows;

- that the proposal has insufficient merit and therefore the road should be retained, or
- the proposal has sufficient merit to be referred to the Council for a decision.

## Sale

Unless the subject road is on Crown land, the land vests in Council. Council can subsequently sell the land from the discontinued road or retain it for municipal purposes. Sale of land must align with the requirements held under Council's Property Policy.

Where there are two or more abutting property owners seeking to purchase the same land, Council will decide on the allocation of the land. The existence of underground services may influence Council's decision.

## Sale Conditions

Any material in the road of value (such as Bluestone pitchers) to the Council will be purchased by the purchaser at time of sale at the current market value of such materials. If the applicant chooses to have the material removed, the cost of removal will be borne by the applicant.

The Council reserves the right to place any easement or covenant on the land to be sold.

The portion of land being purchased must be consolidated with the remainder of the purchaser's property, and the purchaser must meet all of the costs associated with consolidation.

The full purchase price of all land sold shall be paid to Council at the time of settlement. The transfer of land shall not be passed on to the purchaser until the full purchase price, including associated costs and any interest, are paid in full to Council.

## Price

The land will be valued by Council's **Preferred External** Valuer at the current market value for land in that zone, in that location, to determine the purchase price.

Where State government policy applies an acquiring entity can only purchase land for the amount identified by a valuation by the Valuer General, the Valuer General valuation will be used as the sale price.

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

In exceptional circumstances, the purchase price and/or fee may be discounted or waived by Council. Any discount or waiver will be determined by a Council decision.



## Application Costs

An Application Fee is payable for a discontinuance and sale application. This fee is determined on an annual basis in accordance with the Local Government Act and Council's Fees and Charges Schedule.

In addition to this, the Applicant will be required to pay administrative costs including legal, valuation and conveyancing costs associated with an application, regardless of the outcome.

## Adverse Possession

Adverse Possession is a method of gaining legal title to real property as a result of exclusive, uninterrupted possession of the land for an extended period, and where there is no history of opposition by other neighbours to the illegal takeover of the land. The Road Management Act 2004 prohibits adverse possession of any land that is defined as a Road.



## Relevant policy, regulations or legislation

- Local Government Act 1989
- Road Management Act 2004
- City of Port Phillip Property Policy 2019
- City of Port Phillip Road Management Plan 2021
- Community Amenity Local Law No. 1
- City of Port Phillip *Activating* Laneways Strategy (2011)
- *Transfer of Land Act 1958*
- *'Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land', dated June 2009.*
- *Charter of Human Rights and Responsibilities Act 2006.*