

# Discontinuance and Sale of Roads, Right of Ways and Reserves Policy

Organisation policy title	Discontinuance and Sale of Roads, Right of Ways and Reserves Policy 2022
Organisation policy owner	Director, Corporate Services
Approved by	Bayside City Council
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## Information about this Document

This Policy is established in accordance with the Privacy and Data Protection Act 2014 (Act), and outlines Council's commitment to protecting an individual's right to privacy and management of personal information as required by the Act.

Requests for access to and correction of documents containing personal information are generally managed under the *Freedom of Information Act 1982* (Vic) (**FOI Act**). However, some requests for personal information may be dealt with informally (outside the FOI Act).

Such requests must be made in writing and addressed to the:  
Freedom of Information Officer  
Bayside City Council  
76 Royal Avenue  
Sandringham VIC 3191

Email: [FOI@bayside.vic.gov.au](mailto:FOI@bayside.vic.gov.au) or contact the Freedom of Information Officer (03) 9599-4352 to discuss your requirements.

For further information on how to make an FOI request, please visit the Council website at –

<https://www.bayside.vic.gov.au/freedom-information>

This Policy have been published by Bayside City Council in compliance with the *Privacy and Data Protection Act 2014* (Vic) and the guidelines published by the Independent Broad-based Anti-corruption Commission (IBAC).

## Human Rights Charter

This Policy has been assessed against the principles of the *Victorian Charter of Human Rights and Responsibilities Act 2006* (the Charter) and are considered to be compatible with the Charter. In assessing the proposed changes, consideration has also been given to the *Equal Opportunity Act 2010* and the *Gender Equality Act 2020*.

## Governance Principles

In the development of this Policy the requirements of the Governance Principles as per the *Local Government Act 2020* have been considered and are summarised below:

<b>LGA S 9.1</b>	<b>Governance Principle</b>	<b>Consideration</b>
a)	Compliance with the law	This policy meets the requirements of the Local Government Act 1989 and Local Government Act 2020 and other relevant Acts. All relevant requirements have been considered in the development of this policy.
b)	Achieve best outcomes for the community	This policy articulates Council's commitment to ensuring that Council protects its right as an owner to achieve a fair return for land it wishes to sell, as well as an open and transparent policy for those who wish to purchase land. It supports managing risk to Council created by illegal encroachment.
c)	Promote the sustainability of the municipality	This policy ensures that Council looks to ensure that land is retained and maintained by Council if appropriate, and that land is available to be sold when it has no strategic value to Council. The policy articulates where land may be retained for open space, tree cover and habitat corridor planting.
d)	Engage the community in strategic planning and decision making	This policy is externally focussed ensuring that for each decision taken to discontinue and/or sell land, the community is provided with the opportunity to engage before Council makes a final decision on the matter.
e)	Strive for innovation and continuous improvement	This policy enables Council to be more flexible where appropriate to achieve the best outcomes for all parties who have a direct interest in rectifying illegal encroachment and the discontinuance and sale of land.
f)	Collaborate with all other levels of government and government agencies	This policy directly impacts residents of Bayside and does not impact any other level of government. If a proposed discontinuance and sale of a road adjoins any other public body, or easements are required in favour of another public body, Council will engage with that public body at that time.
g)	Secure the ongoing financial viability of Council	This policy directly impacts Council's financial viability in that it creates the potential for funds to be allocated to the potential acquisition of land elsewhere in Bayside.  It supports minimising risk to Council from issues arising from illegally occupied land.
h)	Strategic planning and decision making must take into account plans and policies in operation at all levels.	This procedure supports the objective of Council through the Council Plan – Our Promise – Open and transparent governance process and contributing to Financial Sustainability. It also integrates other plans through consideration of land being retained for other Council purposes.
i)	Council decisions, actions and information must be transparent.	This policy will be reviewed and adopted through the public decision-making forum following community engagement. It will be formally adopted at a Council Meeting, and the policy will be publicly available via Council's website in accordance with Council's Transparency Policy.

## 1. Introduction

Many of Councils roads, right of ways and reserves were set out in early plans of subdivisions and are no longer required for their original purpose.

## 2. Purpose

This Policy provides a direction as to whether those roads, right of ways and reserves should be retained and managed or discontinued and/or sold.

## 3. Objectives

The objectives are to:

- Provide a consistent and equitable approach to the management, discontinuance and/or sale of the land; and
- Ensure that all land that is reasonably required will be retained and ensure it is open and available for the public; and
- Wherever not reasonably required, ensure that the land is appropriately managed or otherwise disposed of in accordance with this policy; and
- Achieve a satisfactory financial and environmental outcome which is beneficial to both Council and Applicants.

The achievement of the objectives of this Policy will:

- Reduce Council's long term financial and legal liability for land it no longer requires (e.g. maintenance, cleaning and public liability); and
- Improve local amenity for Bayside residents (e.g. increasing security of property by the elimination of access points); and
- Formalise ownership and occupation of land; and
- Maximise additional revenue generated from the transfer or management of land.

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006* and has been developed in accordance with the *Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land* dated 2009.

#### 4. Glossary - Definitions and Abbreviations

Term	Meaning
Agreement in Principle	A signed Cost Agreement accepting all liability for payment of the associated fees required to complete the proposal
Applicant	An adjoining property owner seeking to purchase land
Encroacher	The proprietor of any property occupying land that they do not own
External Authorities	Government Bodies, Government-Owned Authorities or Public Bodies
Internal Authorities	Bayside City Council Officers
Natural Purchaser	Any Applicant not described as a Non-natural Purchaser
Nominal Financial Return	A purchase price shall be not less than \$15,000 excluding GST
Non-natural Purchaser	Any corporate body, unincorporated firm, partnership or body with legal personality except an individual
Regular, on-going Vehicular Access	Access that is currently required on a weekly basis and will continued to be required in future for a motor vehicle (i.e. a car, not a cycle and not a motorcycle)
Reserve	A drainage and other reserve not set aside for other recreational purposes
Right of Way	Included as a 'Road' under Section 3 of the Local Government Act 1989.
Road	As defined in section 3 of the <i>Road Management Act</i> 2004 and Section 3 of the <i>Local Government Act</i> 1989 The term "road" includes, but is not limited to, a right of way, a street or a footpath etc.
Subject Land	Means the Road, Right of Way, Reserve or other land (as applicable) that is the subject of a proposed discontinuance or sale.

#### 5. Scope

This policy sets out the conditions and principles under which a road, right of way or reserve may be managed, discontinued and/or sold.

#### 6. General

It is entirely at the discretion of Council as to the management, discontinuance and/or disposal of a road, right of way or reserve.

Council will encourage the disposal of road, right of way or reserve if land is not reasonably required and may result in a better use of the land.

Council considers land not reasonably required if it does not provide for:

- Regular, on-going vehicular access
- Drainage purposes
- Other strategic value to Council

Council will ensure appropriate action is taken against any unlawful occupation of land.

## **7. Process for discontinuance and sale**

### **7.1 Application**

An application for the discontinuance and sale of a road, right of way or reserve must be made to Council in writing.

Council may consider it appropriate to initiate a road discontinuance proposal itself.

An application fee to cover the 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 process. This fee will be set annually as part of Council's fees and charges.

Council may choose not to accept an application for the discontinuance and sale of a road, right of way or reserve, where the overall outcome will result in a nominal financial return for Council.

Council will consult with adjoining owners on the application. Where an adjoining owner objects to the application, Council will consider the merits of the objection and determine at its discretion to proceed with the application or to retain the Subject Land in its current form on the basis that it is still genuinely required for its original purpose.

### **7.2 Consideration of requirements**

If the road, right of way or reserve is no longer considered to be reasonably required in accordance with this Policy, Council will encourage the disposal of the land.

If Council considers the road, right of way or reserve to be reasonably required in accordance with this Policy, the Subject Land may be retained and managed at the discretion of Council

Where the Subject Land is not considered to no longer be reasonably required, Council may elect to retain the land on the basis that it is suitable:

- for use or incorporation into adjacent public land, either for open space or in furtherance of a Council project or objective;
- as a habitat corridor or island through supplementary planting pursuant to Council's *Park Improvement and Habitat Linkage Plan* and *Bayside Biodiversity Action Plan 2018–27*; or
- to support planting of vegetation types noted in the *Park Improvement and Habitat Linkage Plan* and *Bayside Biodiversity Action Plan 2018–27* as being beneficial to wildlife.

### **7.3 Land Allocation**

Council will only sell land to adjoining property owners.

Officers will attempt to divide the land equally between all Applicants.

Adjoining property owners must have clearly expressed a written interest to purchase land during the referral process, in order to be considered, regardless of whether they are, or are not, in favour of the proposal.

If an adjoining property owner does not express an interest to purchase the land, or no longer wishes to purchase the land, the land will be offered to other adjoining owners to purchase.

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).

Council will not accept additional requests to purchase land once it has reached an agreement in principle with the Applicants. This includes if there has been a change in ownership from an adjoining property owner at any time throughout the discontinuance and/or sale process.

Council will have the final decision as to how the land will be allocated.

#### **7.4 Valuation of Land**

Net 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.

Council will not sell land for less than the market value unless a further discount has been approved in accordance with this Policy.

The market value will be determined by an independent Valuer contracted to Council. Third party valuations will not be considered.

The Valuer is required to take into account all facts affecting the market value of the land, including (but not limited to) land composition, location, use, encumbrances and added development potential.

The total paid to Council for a transfer of land irrespective of the size or valuation shall be no less than the Nominal Financial Return.

#### **7.5 Discount**

In exceptional circumstances, Council may, at the discretion of the Director of Corporate Services, offer a one-time only further discount of up to 50% of the market value. An exceptional circumstance arises where land:

- is not capable of being reinstated for further public use;
- has been exclusively occupied in excess of 15 years and may otherwise give rise to an adverse possession claim
- is not vested in the ownership of any Government body; or
- other criteria determined at the discretion of the Director of Corporate Services.

#### **7.6 Costs**

All costs associated with the management, discontinuance or sale of land that are incurred by Council will be paid or shared by the Applicant/s regardless of the outcome.

Applicants are required to enter into an Agreement in Principle (Cost Agreement) with Council, accepting liability for all associated costs relative to the proposal, prior to commencing any statutory procedures.

Each Applicant shall also bear their own legal and conveyancing costs associated with the transfer of the land.

#### **7.6.1 Failure to Pay Costs**

If an Applicant fails to pay the costs requested by Council, Council may consider revocation of any agreements relative to the management, discontinuance and/or sale of land. Council may also exercise its rights to issue legal proceedings against the Applicant for recovery of those costs.

#### **7.6.2 Relocation and Replacement Costs**

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 Applicant/s.

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.

#### **7.7 GST**

In accordance with the provisions of the Goods and Services Tax Act 1999, the sale of Council property, including the roads, right of ways and reserves will generally 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.

#### **7.8 Payment Terms**

Following a Council resolution, Council may request up-front payment of the purchase price and costs from Natural Purchasers, to be held in trust by Council's legal representatives, until settlement has occurred.

Council may request payment of any costs from Non-Natural Purchasers at any time during the proposal.

Following a Council resolution, Council may request payment of a 10% or more deposit of the full purchase price, to be paid directly to Council, with the balance of the full purchase



price to be paid up front and held in trust by Council's Lawyers, until settlement has occurred.

In special circumstances, as determined at the discretion of the Manager of Commercial Services, the payment terms may be extended to allow equal payments over a period of time, not exceeding three years. An additional service charge may be included by Council to cover any administration costs.

Settlement of the land will not occur until all Council and legislative requirements in relation to the proposal are met, including full payment of the purchase price and any costs required to complete the proposal.

## **8. Unlawfully Occupied Land**

Council will take appropriate action against the unlawful occupation of land.

An Authorised or Delegated Officer of Council may direct the removal of any obstruction of Council owned or managed land in accordance with Section 64 of Council's *Local Law No. 2 Neighbourhood Amenity* and enforce appropriate penalties until the breach has been remedied.

Alternatively, an Encroacher may be invited to enter into discussions with Council to purchase unlawfully occupied land.

### **8.1.1 No Agreement to Purchase**

If Council does not receive a response from the Encroacher within the specified time frame, or if the Encroacher states that they do not intend to purchase the unlawfully occupied land, then Council may consider further action, including directing the removal of all encroachments over the land (such as fences, garden sheds, swimming pools and buildings, if any), at the cost of the Encroacher.

Council will also place a notation on the Encroacher's Land Information Certificate outlining the unlawful occupation land, bringing it to the attention of any future owners of the property. Council will do this so that any future owners are aware that they will not be acquiring any interest in the unlawfully occupied land when they purchase your property.

### **8.1.2 Licence of Unlawfully Occupied Land**

If an Encroacher does not wish to obtain title to the land in accordance with this Policy, Council will require the Encroacher to enter-into either a licence deed (licence) to occupy the land.

The licence will:

- Be on Council's standard terms;
- Require the Encroacher to pay an annual occupation fee reviewed annually adjusted by CPI;
- The annual occupation fee shall be set at \$50 plus GST per square meter per annum;
- Require the Encroacher to pay an administration fee of \$500 plus GST per annum in addition to the occupation fee; and



- Require the Encroacher to pay rates for and maintain the Council-owned or controlled land at the Encroacher's cost.

The licence will provide retrospective permission for the location of any improvements (subject to prevailing planning or building requirements), currently constructed on the land and indemnify Council for all liabilities arising as a result of the Encroachers occupation of the land and the occurrence of particular risks (e.g. death or injury to persons on the land, etc);

Council will only licence land as a result of unlawful occupation where an agreement between Council and the Encroacher cannot be met.

Failure to do so may require the encroacher to remove any improvements that are constructed on the Council-owned or managed land, at their cost.

## 9. Monitoring, evaluation & review

The Manager Commercial Services is responsible for ongoing monitoring and review of the effectiveness of this Policy. Sales of discontinued roads, right of ways and 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 4 years or on significant changes to legislation or Council objectives related to property management.

## 10. 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.

## 11. Related documents

<b>Legislation</b>	<i>Local Government Act 1989 Local Government Act 2020 Road Management Act 2004 Goods and Services Tax Act 1999 Limitation of Actions Act 1958</i>
<b>Policies</b>	<i>Community and Stakeholder Engagement Policy 2021</i>
<b>Strategies/Plans</b>	<i>Property Strategy 2020-2025</i>
<b>Procedures/Processes</b>	-
<b>Other</b>	-

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