

Road Discontinuance Policy

Date adopted	24/02/2025
Adopted by	Council
Review due	26/02/2029
Responsible officer	Senior Lawyer and Property Advisory
Records reference	11035019

1. Purpose

The purpose of this Policy is to ensure that Council has a consistent, equitable and transparent approach which complies with best practice and legislative requirements as it relates to discontinuance and/or sale of roads and road reserves within the City of Melton. The Policy promotes best outcomes for the Melton Community.

2. Application And Scope

This policy applies to 'roads' and 'road reserves' within the City of Melton where Council is the coordinating road authority.

Council may self-initiate a discontinuance or may receive a request or application from an interested party. A road will only be discontinued, where Council determines the road to be no longer reasonably required for public use.

Council has powers to discontinue roads pursuant to:

- Clause 3, Schedule 10 of the *Local Government Act 1989*
- Section 12 of the *Road Management Act 2004* and
- Sections 43 and 44 of the *Planning and Environment Act 1987* via amendment to the Melton Planning Scheme.

This policy applies to the exercise of powers under the *Local Government Act 1989* and the *Road Management Act 2004*.

This policy does not apply to road discontinuances via planning scheme amendment pursuant to the *Planning and Environment Act 1987*.

3. General Provisions

Council may at its absolute discretion, discontinue any road within the municipal district of which it is the road authority and considers is no longer reasonably required for public use. Council may elect to retain surplus land for municipal purposes or sell the land (provided it is not Crown land) pursuant to Council's Sale and Acquisition of Land Policy which may change from time to time. Council may at its discretion, retain any land and choose not to proceed with a road discontinuance.

Unless an explicit delegation empowers an Officer to make the decision, the decision to discontinue a road must be a decision of Council.

Council will consider the discontinuance of a road having considered the past, present and future extent, type and use. Council will particularly consider alternate means of access or other impacts which may be seen as a result of a road discontinuance.

A decision to dispose of a road following or concurrently with a discontinuance will have regard to a range of circumstances including, any right, power or interest held by any public authority (including Council) in the road in connection with any sewers, drains, pipes, wires or cables under the control of the authority in or near the road.

3.1. Assessment Criteria

In deciding whether or not to discontinue a road, Council will consider:

- requirements of emergency services and statutory service authorities for effects on abutting properties and buildings and their owners and occupiers with respect to access to their premises
- impacts on infrastructure and services
- future strategic purpose or opportunity for activation
- the historical significance of a road
- any other factor Council deems relevant.

Council may support discontinuance to enable the land to be sold where:

- it is determined that a road is 'not reasonably required for general public use' and has no strategic or heritage value to Council
- the proposed discontinuance does not significantly impact upon access to other abutting properties and buildings
- the discontinuance and sale will promote amenity improvements, for example, a reduction in anti-social behaviour or dumping of rubbish
- the discontinuance rectifies an anomaly which will result in greater certainty of property ownership and associated rights including documented maintenance issues.
- Council will recover all reasonable costs associated with the sale of land.

3.2. Vesting of Surplus Land

Except for Government Roads, land resulting from a discontinued road becomes unencumbered freehold land vested in the authority who discontinued it.

3.2.1. Government Roads

Surplus land resulting from the discontinuance of a Government Road will remain vested to the Crown. Requests to discontinue unused Government Roads will be referred to the relevant Victorian Government Department, in the first instance. Where Council is the appointed Committee of Management over a Government Road, Council may complete the administrative process of a discontinuance with the approval of the relevant Delegate.

3.2.2. Municipal Roads

Council has authority to discontinue any Municipal Road in the City of Melton of which it is the road authority, if it considers the road is not reasonably required for public use. Surplus land resulting from the discontinuance of a Municipal Road will vest to Council.

3.3. Statutory Requirements

3.3.1. Notice of Intention to Discontinue

A person may make a submission under section 223 of the Act on the proposed exercise of any power under clauses 1(b), 2, 3, 7 and 8(1)(a) of Schedule 10.

Section 223 - Right to make submission

- 1) The following provisions apply if a person is given a right to make a submission to the Council under this section (whether under this or any other Act)—
 - a) the Council must publish a public notice—
 - i) specifying the matter in respect of which the right to make a submission applies;
 - ii) containing the prescribed details in respect of that matter;
 - iii) specifying the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published;

Pursuant to section 12(2) of the Road Management Act 2004 and where Council is the coordinating road authority, Officers may, under delegation, proceed to discontinue a road, by publishing a notice in the local newspaper and any other means of communication deemed necessary in accordance with Council's Community Engagement Policy.

The notice must contain all the particulars and a survey drawing of the proposal and include the date by which submissions are to be submitted, which must not be less than 28 days after the date on which the public notice is published.

3.3.2. Submissions

The proposal concerning the discontinuance and any submissions, will be considered by Council in accordance with section 223 of the Act and a final report to be prepared to a meeting of Council for consideration and a decision.

3.3.3. Gazettal

Where the road is determined to not be required for public use by the Executive Leadership Team, and has the endorsement of Council where necessary, Officers may under delegation, enact the discontinuance via a notice published in the Victoria Government Gazette.

The discontinuance is effective from the gazettal date.

3.3.4. Public Notice of Decision

In accordance with s223 and Council's Community Engagement Policy, persons who made submissions or objections must be notified of the decision and the reasons for the decision in writing.

3.3.5. Sale of land

Surplus land vested to Council resulting from a road discontinuance and proposed for disposal will be managed in accordance with Council's Sale and Acquisition of Land Policy which is subject to change from time to time.

In addition to the Sale and Acquisition of Land Policy and where land is to be sold following a discontinuance, the following will be considered:

- (a) Where an adjoining owner can demonstrate continuous and exclusive occupation of the land for in excess of 10 years, that owner will be given first option to purchase the land.
- (b) If an abutting owner does not wish to purchase Council's proposed allocation of land, then that portion may be provided as an option for purchase to the other abutting property owner for purchase.
- (c) In respect of land that is unoccupied, or has been occupied for a period less than 10 years, it is to be allocated or divided as near as is practical equally amongst abutting land owners. Variation to this may be made by mutual agreement of the abutting owners where approved by Council.

The allocation or division of the land is at Council's discretion, subject to the requirements of any service authorities (e.g. location of drains). Where there is dispute as to the allocation, the decision will be made by Council resolution at the sole discretion of Council.

Purchasers are required to consolidate the land with their abutting land in accordance with the *Subdivision Act 1988*. Council will ensure this is a requirement under formal agreement with the purchaser at the cost of the purchaser.

In accordance with the provisions of the *A New Tax System (Goods and Services Tax) Act 1999*, the sale of discontinued roads and reserves will generally attract GST as from 1 July 2000. This obligates Council to ensure that the sale price of such land is GST inclusive. All gross revenue received from the discontinuance and sale of roads and reserves, is to be allocated to Council's Sale of Land ledger.

3.3.6. Retention of Land

If the land is to be retained by Council, an amended plan is to be certified and lodged with the Registrar of Titles to remove the road status from the land and subdivide or consolidate the land where necessary in accordance with the *Subdivision Act 1988*.

4. Definitions

Term	Definition
Coordinating road authority	in relation to a road, means the road authority which has coordination functions as determined in accordance with section 36 of the <i>Road Management Act 2004</i>
Council	means Melton City Council
Delegated Officer	means authority by Instrument of Delegation given under section 47(1) of the <i>Local Government Act 2020</i> or by a resolution of Council
Discontinue	means the removal of the 'road' status from a road or road reserve and extinguishment of carriageway rights through the exercise of power under either: <ul style="list-style-type: none"> • Clause 3 Schedule 10 <i>Local Government Act 1989</i> • s12 of the <i>Road Management Act 2004</i> or • s43 and 44 of the <i>Planning and Environment Act 1987</i>
Government Road	means a road established on a parish plan and held in the ownership of the Crown
Road	As defined in Section 3 of the <i>Local Government Act 1989</i> .
The Act	means the <i>Local Government Act 1989</i>

5. Related Documents

Name	Location
Community Engagement Guidelines	Community Engagement Guidelines Melton City Council
Community Engagement Policy	Community Engagement Policy Melton City Council
Crown Land (Reserves) Act 1978	Crown Land (Reserves) Act 1978 legislation.vic.gov.au
Local Government Act 1989	Local Government Act 1989 legislation.vic.gov.au
Local Government Act 2020	Local Government Act 2020 legislation.vic.gov.au
Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land	Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land Local Government Victoria

Name	Location
Planning and Environment Act 1987	Planning and Environment Act 1987 legislation.vic.gov.au
Road Management Act 2004	Road Management Act 2004 legislation.vic.gov.au
Sale and Acquisition of Land Policy	
Subdivision Act 1988	Subdivision Act 1988 legislation.vic.gov.au

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