

# Sale of Minor Council Property Assets Policy

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# Sale of Minor Council Property Assets Policy

## TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	PURPOSE	1
3.0	OBJECTIVES	2
4.0	SCOPE	2
5.0	DEFINITIONS	3
6.0	POLICY FRAMEWORK	3
7.0	PROCESS FOR DECLARING SURPLUS MINOR COUNCIL PROPERTY ASSETS	3
7.3	General Principles for the Sale of Minor Council Property Assets	5
8.0	REVIEW AND PREPARATION OF SURPLUS MINOR COUNCIL PROPERTY ASSETS PRIOR TO SALE	6
9.0	LEGISLATIVE REQUIREMENTS	7
9.1	Statutory Procedures	7
9.1.1	Discontinuance and Sale of Roads (Local Government Act 1989 clause 3 of schedule 10)	7
9.1.2	Removal/Vesting of Drainage Reserves (Subdivision Act 1988 section 20, 24 & 24A)	7
9.1.3	Other Property Assets (Local Government Act 1989 Section 189 & 223)	8
9.2	Exemptions	8
9.3	Valuation of Minor Council Property Asset (Local Government Act 1989 section 189(2) (b))	8
9.4	Council Report to Determine the Sale	8
9.5	Goods and Services Tax	9
10.0	SALE PROCESS	9
10.1	Application Process	9
10.2	Consultation	9
10.3	Sale Price	10
10.4	Recovery of Other Costs	11
10.5	Division of Land	11

<b>10.6</b>	<b>Easements, Caveats and Covenants</b>	<b>11</b>
<b>10.7</b>	<b>Relocation of Assets</b>	<b>11</b>
<b>10.8</b>	<b>In Principle Agreement</b>	<b>12</b>
<b>10.9</b>	<b>Letter of Offer</b>	<b>12</b>
<b>10.10</b>	<b>Council Offer Process</b>	<b>13</b>
<b>10.11</b>	<b>Payment and Transfer of Title</b>	<b>13</b>
<b>10.12</b>	<b>Land that is Not Sold</b>	<b>14</b>
<b>11.0</b>	<b>MANAGEMENT OF ROADS, RESERVES AND OTHER MINOR PROPERTY ASSETS</b>	<b>15</b>
<b>11.1</b>	<b>Maintenance</b>	<b>15</b>
<b>11.2</b>	<b>Fencing and Gates</b>	<b>15</b>
<b>11.3</b>	<b>Unauthorised Occupation and Encroachments</b>	<b>15</b>
<b>11.4</b>	<b>Construction of Roads</b>	<b>16</b>
<b>11.5</b>	<b>Developments abutting Unmade Roads</b>	<b>16</b>
<b>11.6</b>	<b>Declaring a Right-of-Way a Road under the Road Management Act 2004</b>	<b>16</b>
<b>11.7</b>	<b>Unsold and Landlocked Land</b>	<b>17</b>
<b>12.0</b>	<b>DELEGATION / AUTHORITY</b>	<b>17</b>
<b>12.1</b>	<b>The Policy</b>	<b>17</b>
<b>12.2</b>	<b>Discontinuance and Sale of Roads</b>	<b>17</b>
<b>12.3</b>	<b>Removal of Reserve Status on Land</b>	<b>17</b>
<b>13.0</b>	<b>POLICY REVIEW</b>	<b>17</b>

**APPENDIX A – APPLICATION TO PURCHASE A MINOR COUNCIL PROPERTY ASSETS**

## 1.0 INTRODUCTION

Council's (on behalf of the Darebin community) possesses and/or has responsibility for a diverse and extensive portfolio of property assets which includes parcels both large and small. Smaller parcels of land include roads, reserves, revege strips, hiatus and other pieces of land of unusual shape and/limited usefulness that are less than 200m<sup>2</sup> in area.

Council has acquired ownership and/or responsibility for these property assets by various means, including:

- Acquisition by purchase, agreement or compulsory acquisition
- Donation
- Crown Grants
- Open space contribution
- Reserved by subdivision (e.g. roads, drainage reserves, revege strips)
- Vesting (e.g. through the road discontinuance process)

As the means by which Council has obtained ownership of land is varied and has occurred over the past century, some Minor Council Property Assets may no longer provide benefit to the community or may not be used or required for the purpose for which they were originally acquired.

From an asset management perspective, Council's property portfolio must meet current service needs whilst providing the flexibility to meet future requirements. This includes taking up the opportunity to sell surplus property assets.

Roads, reserves, revege strips, hiatus and other pieces of land of unusual shape and/limited usefulness that are less than 200m<sup>2</sup> in area (collectively referred to as Minor Council Property Assets in this policy) were originally set aside in early plans of subdivision for a particular purpose such as access or drainage. In many cases these parcels of land are still required for that purpose and need to remain open and available to the public. In situations where a Minor Council Property Asset is no longer reasonably required, it may be considered surplus and suitable for sale.

## 2.0 PURPOSE

This policy governs the process for assessment and sale of surplus Minor Council Property Assets that will protect Council's interests in a fair manner.

Through this policy, Council is demonstrating its commitment to the responsible management of its property portfolio in accordance with the strategic property objectives set out in the Property Asset Management Strategy:

1. Property assets contribute to economic growth
2. Property assets contribute to the health and social wellbeing of the community
3. Property assets can promote a balance between development and sustainability
4. Property assets contribute to the creative culture of the City
5. Council will optimise the service potential of its property assets

### **3.0 OBJECTIVES**

The objective of this policy is to provide set of core principles and values for reviewing, identifying and evaluating Council's property portfolio and determining whether a Minor Council Property Asset is surplus to Council's requirements and suitable for sale.

The document sets out standard guidelines for the community consultation process and to ensure that all statutory obligations relating to the sale of Council land are met.

These objectives will be achieved through the key concepts of **protecting** Council's interests in a **fair** manner:

#### **3.1 Protect**

##### **(i) Financial**

The sale of any Minor Council Property Asset should aim to achieve a minimum of market value for the land except where there is a clearly demonstrated community benefit in selling the land for less than market value.

##### **(ii) Property**

Continuously improve the performance of Council's property portfolio by reviewing it in line with the Property Asset Management Strategy and other relevant strategies and plans to ensure that a proactive and comprehensive analysis is undertaken in the identification of potentially surplus Minor Council Property Assets.

##### **(iii) Legal**

Council will ensure compliance with relevant legislation and statutory obligations in the disposal of surplus Minor Council Property Assets.

##### **(iv) Community Interest/Use**

The sale of surplus Minor Council Property Assets should be in the best interest of the wider community having full regard to needs and expectations.

#### **3.2 Fair**

##### **(i) Consultation**

Ensure appropriate consultation with the community and key stakeholders and that all relevant comments and representations are taken into consideration.

##### **(ii) Equality**

Land from surplus Minor Council Property Assets will be offered to adjoining property owners on the basis of equitable distribution having no regard for present or prior occupation of the land.

##### **(iii) Transparency**

Provide an efficient, consistent and transparent process that will be open to public scrutiny while maintaining appropriate levels of commercial confidentiality.

### **4.0 SCOPE**

This policy will apply to Minor Council Property Assets (as per definition in section 5.0) that are no longer required for access, infrastructure or other strategic purposes and are considered surplus to Council's requirements.

## 5.0 DEFINITIONS

In this policy the following definitions apply:

**Hiatus** – a gap in the property cadastre created by measurement errors in plans of subdivision.

**Minor Council Property Asset** includes Roads, reserves, revenge strips, hiatus and other pieces of land of unusual shape and/limited usefulness that are less than 200m<sup>2</sup> in area.

**Reserve** means land reserved on title for the purposes of drainage or other purposes, including Revenge Strips, but not land which is set aside for recreational purposes. For the purposes of clarity, this does not include land which would be commonly considered to be a 'park'. The sale of 'park' land would be investigated through a different process to that described within this policy.

**Revenge Strip** means a small parcel of land or a reserve which has been created by subdivision, generally for the purpose of separating subdivisions.

**Road** for the purposes of this policy has the same definition as that contained within the *Local Government Act 1989*. For the purposes of clarity, the term "road" includes, but is not limited to rights-of-way, a carriageway, a street or a footpath.

## 6.0 POLICY FRAMEWORK

This policy addresses the following elements:

- the process of declaring a Minor Council Property Asset surplus
- review and preparation of the surplus Minor Council Property Asset prior to sale
- compliance with legislative requirements
- the sale process

## 7.0 PROCESS FOR DECLARING SURPLUS MINOR COUNCIL PROPERTY ASSETS

### 7.1 Assets and Properties Department

The Assets and Properties department has responsibility for reviewing, identifying and evaluating Council's property portfolio and providing a recommendation about whether property, including Minor Council Property Assets, are surplus to Council's requirements in accordance with this Policy, Council's Property Asset Management Strategy and other relevant strategies and plans.

While a decision to sell or strategically acquire property can sometimes be made on an opportunistic basis, a long term planned approach to disposal (and acquisition) of Council property provides an opportunity to maximise the value gained from potential sales by taking actions that will increase the saleability of properties and provide the best return to Council and benefit for the wider community.

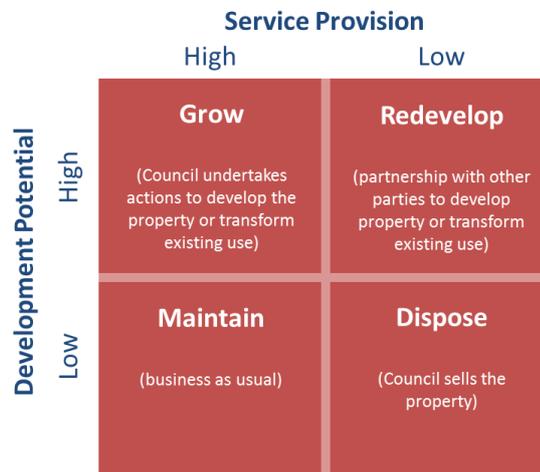
Future property and service requirements must be considered before any Council property asset is sold.

## 7.2 Property Assessment Tools

Minor Council Property Assets will be assessed using the Decision Logic Map and the Decision Logic Matrix contained within the Property Asset Management Strategy.

Council's Property Asset Management Strategy details a structured process to guide decision making for property assets which involves the assessment of a property via the decision logic map to determine how critical a property is to Council's core property functions and the role of that property asset in meeting Council's current and future service requirements. The Decision Logic Map provides a series of questions about a property asset to determine the most appropriate management action to undertake.

The questions in the Decision Logic Map will produce a result that is consistent with the Decision Logic Matrix (see figure below) which identifies the appropriate management action for a given property assets based on its ability to provide service and the development potential.



**Figure 1 – Decision Logic Matrix**

Such assessment may be initiated by Council officers or upon request by an adjoining owner or other interested parties.

If the assessment identifies that the Minor Council Property Asset is no longer reasonably required for the purpose it was originally set aside for or any other strategic purpose (Dispose), it is deemed surplus to Council requirements and the Minor Council Property Asset will be considered suitable for sale. From this point onwards the potential sale of the Minor Council Property Asset will be progressed depending on the status of the land, i.e. road, reserve or other minor Council property asset (sections 9.0 and 10.0) and after considering any General Principle (section 7.3) that may apply to the land.

On the other hand, if the sale of the Minor Council Property Asset is not considered feasible, any applicant or interested party will be notified, and no further steps will be taken.

### 7.3 General Principles for the Sale of Minor Council Property Assets

The following policy principles will be taken into account when considering the sale of a Minor Council Property Asset:

- (i) Discontinuances would generally only proceed where an entire section Road or Reserve where feasible.
- (ii) The discontinuance of roads that are constructed (i.e. have a surface of bluestone, concrete or asphalt) will only be considered in cases where the road is demonstrably not required for access or where an alternate access can be provided to the satisfaction of adjoining property owners.
- (iii) Land from the discontinuance of the road or reserve status of a Minor Council Property Asset may be either sold or retained by Council for its own purposes.
- (iv) Land from surplus Minor Council Property Assets will be sold in accordance with legislative requirements.
- (v) Land from surplus Minor Council Property Assets will be offered for sale at market value plus costs.
- (vi) Land from surplus Minor Council Property Assets may be sold for less than market value in cases where a quantifiable community benefit exists or the land to be used for services that would otherwise be provided by Council or are complementary to Council services.
- (vii) Land from surplus Minor Council Property Assets that are sold for less than market value, will be sold with appropriate measures in place (such as an agreement under section 173 of the *Planning and Environment Act 1987*) to guarantee that the land will continue to be used for this purpose.
- (viii) Land from surplus Minor Council Property Assets may be sold subject to an easement registered on title in favour of a public authority or Council to protect any right, power or interest in, on or over the land.
- (ix) Council may remove any bluestone pitchers or other reusable materials within Minor Council Property Asset prior to sale.
- (x) Land from surplus Minor Council Property Assets is sold on an as-is basis at the time of transfer with the purchaser responsible for removal of any biological or physical material that may be present.
- (xi) Purchasers of land from surplus Minor Council Property Assets will be responsible for arranging for fencing of the land (in accordance with the mutual neighbourly responsibilities set out in the *Fencing Act 1968*) once the transfer is complete. This would include removal/relocation/reinstatement of fencing along the boundaries of the property.
- (xii) Proposed divisions of Minor Council Property Assets will seek to equitably distribute the available land taking into account:
  - 1. Existing property boundaries (try to make neat parcels)
  - 2. Existing structures on Minor Council Property Asset and the surrounding land (consider how land can be used by purchasers)
  - 3. The presence of underground assets (try to avoid placing fences directly above underground drains)
- (xiii) Proposed divisions of Minor Council Property Assets may be longitudinal, latitudinal, diagonal or other methods as necessary to achieve an equitable distribution that is sensible to existing conditions.

## **8.0 REVIEW AND PREPARATION OF SURPLUS MINOR COUNCIL PROPERTY ASSETS PRIOR TO SALE**

Surplus Minor Council Property Assets will be offered for sale in the manner that will ensure the maximum price can be achieved whilst protecting both the Council and the public interest.

The Minor Council Property Asset will be investigated to ascertain its status and whether it may be suitable for sale. This investigation should address the following:

- (i) Certificate of Title, including Council ownership of the land and registered encumbrances
- (ii) Unregistered encumbrances, including unregistered easements in favour of service authorities
- (iii) Zoning: land zoned for public purposes must be appropriately rezoned prior to public sale
- (iv) Reasons for the original acquisition and any related obligations
- (v) Environmental Issues: a historical view and site inspection should be carried out and, if required, a site contamination assessment undertaken. If the land that Council is selling is deemed to be contaminated, a strategy will be prepared for the management of that contamination.
- (vi) Lease and Licence Agreements, including all associated rights
- (vii) Any encroachments on the land and/or rights of adverse possession
- (viii) Potential uses of the site, including identifying the highest and best use of the land and considering the optimum development potential of the land
- (ix) Determining enhancements which may need to be undertaken on the land
- (x) Presentation of the land to expose its best attributes: considerations include repairs, cleaning, cleaning of vegetation, painting, pegging of boundaries and associated works
- (xi) Servicing of the site, including service authority requirements
- (xii) The appropriateness of subdivision of the site and the anticipated costs of any associated public works
- (xiii) Preparation of an agreement under section 173 of the *Planning and Environment Act 1987* may be necessary where Council wishes to control the future use of the land
- (xiv) Town planning permits should be obtained where required
- (xv) Structural and engineering reports may be required
- (xvi) Land must be offered for sale with disclosure of relevant information to enable full and proper due diligence inquiry
- (xvii) Where Council proposes to offer a lease on the land before selling it or where it offers a leaseback, the lease should be drawn in commercial terms and conditions to ensure that full market value of the land is realised.

## 9.0 LEGISLATIVE REQUIREMENTS

The process for the disposal of Council land is governed by the following legislative requirements:

- *Local Government Act 1989*; sections 189, 191 & 223 and clause 3 of schedule 10
- *Subdivision Act 1988*; sections 20 & 24A
- *Road Management Act 2004*
- *Transfer of Land Act 1958*
- *Planning and Environment Act 1987*
- *Local Government Best Practice Guideline For Sale/Exchange of Land June 2009*
- *Goods and Services Tax Act 1999*

A Council resolution is required prior to the sale of any Minor Council Property Asset.

### 9.1 Statutory Procedures

#### **9.1.1 Discontinuance and Sale of Roads (Local Government Act 1989 clause 3 of schedule 10)**

Pursuant to clause 3 of schedule 10 and sections 206, 207A and 223 of the *Local Government Act 1989*, Council has the power to discontinue and sell roads.

Council officers will prepare a report for Council consideration and decision to commence the statutory procedures to discontinue the road status of the land and to sell land from the discontinued road.

Should Council resolve to commence the statutory procedures, it will give public notice of the proposed discontinuance and sale and the submission process by public notice, including a title plan and details of any easements. Such public notice will allow for submissions to be considered in accordance with Section 223 of the *Local Government Act 1989*.

Should submissions be received, all parties that have lodged a submission will be invited to speak in support of such, at a Hearing of Submissions Committee. The invitation to speak in support of a submission will be provided with a reasonable period of notice, advising date, time and place.

A report will be prepared for the Hearing of Submissions Committee advising them of those that wish to be heard and outlining the submissions.

The process would then continue as per section 9.4.

#### **9.1.2 Removal/Vesting of Drainage Reserves (Subdivision Act 1988 section 20, 24 & 24A)**

If the surplus Minor Council Property Asset is a Reserve (not a recreation reserve), Council officers will prepare a report for Council consideration and decision to apply for a planning permit for removal of the reserve status and vesting of the land in accordance with section 24A of the *Subdivision Act 1988*.

A section 24A plan of subdivision will be prepared for certification by Council and lodging at Land Registry. This subdivision plan will remove the reserve status and vest the land in Council.

This process will be undertaken in conjunction with process for potential sale of the Reserve as per section 9.1.3.

### **9.1.3 Other Property Assets (Local Government Act 1989 Section 189 & 223)**

A public notice will be advertised in the appropriate medium detailing the proposal to potentially sell the surplus Minor Council Property Asset in accordance with sections 189 and 223 of the *Local Government Act 1989*. The notice will include details of the Minor Council Property Asset and a plan identifying its location and satisfy other requirements of the *Local Government Act 1989* and the Local Government Best Practice Guide for Sale/Exchange of Land June 2009. This notice will allow for submissions to be lodged with Council within 28 days of the notice. No contract of sale can be entered into until after the 4 week public notice period is served.

In situations where section 189 of the *Local Government Act 1989* notice is given, all parties that have lodged a submission will be invited to speak in support of such, at a Committee of Council – Hearing of Submissions Committee.

The invitation to speak in support of a submission will be provided with a reasonable period of notice, advising date, time and place.

A report will be prepared for the Hearing of Submissions Committee advising them of those that wish to be heard and outlining the submissions.

The process would then continue as per section 9.4.

## **9.2 Exemptions**

The processes outlined in section 9.1 of this policy will not be applied cases subject to section 191 of the *Local Government Act 1989* if the land is being transferred to any of the following organisations:

- the Crown
- a Minister
- public body
- trustee appointed under any Act to be held on trust for public or municipal purposes
- public hospitals detailed in the *Health Services Act 1988*
- Other hospitals carried on by an association or society that is not for profit to members.

## **9.3 Valuation of Minor Council Property Asset (Local Government Act 1989 section 189(2) (b))**

In accordance with section 189(2)(b) of the *Local Government Act 1989*, a Valuer qualified in accordance section 13DA(1A) *Valuation of Land Act 1960* will be instructed to carry out a market valuation of the Minor Council Property Asset. This market valuation must be carried out not more than six months prior to the sale of the property.

## **9.4 Council Report to Determine the Sale**

A report will proceed to Council, summarising the submissions and provide a précis of the Hearing of Submissions Committee meeting (if one is required).

Council will consider the submissions and make a decision whether the Minor Council Property Asset will be sold, retained or considered for some other alternative.

All parties who have made a submission will be notified in writing of the resolution of Council.

## **9.5 Goods and Services Tax**

In accordance with the provisions of the *Goods and Services Tax Act 1999*, the sale of Council property (other than the sale of existing residential premises), including the sale and discontinuance and sale of roads, will attract GST from 1 July 2000. Council will need to ensure that GST is added to the sale price or that the sale price is inclusive of GST.

## **10.0 SALE PROCESS**

### **10.1 Application Process**

The process for the sale of Minor Council Property Assets can be initiated by an adjoining property owner, other interested parties or Council officers (the Proposal).

Those parties external to Council will need to complete an application form (Appendix A) prior to officers commencing the preliminary investigations.

The application should include the following information:

- reasons why the land is no longer required for the purpose for which it was set aside
- reasons why Council would benefit from the sale (if any)
- written agreement from other adjoining property owners in support of the application
- information relating to the status of the land (e.g. currently occupied)
- a plan of the Minor Council Property Asset showing the following information:
  - suggested division of the land
  - any existing pedestrian or vehicular access
  - locations of any buildings or fencing including carports, garages or gates

Minor Council Property Assets that are identified for sale will be disposed of in accordance with this Policy.

### **10.2 Consultation**

Council is committed to an inclusive and transparent consultation process with its community and stakeholders that ensures compliance with relevant legislation and internal policies and strategies.

#### **10.2.1 Internal Referral**

The Proposal is referred to internal Council departments for comment, to ascertain any objections or any requirements they may have in relation to the Proposal, including:

- Engineering
- Traffic
- Building
- Statutory & Strategic Planning
- Open Space

#### **10.2.2 Referral to Authorities**

The Proposal is referred to all statutory authorities for comment, to ascertain any objections or any requirements they may have in relation to the Proposal, including:

- Water Authorities
- Gas Authority
- Telecommunications
- Electricity Authorities
- Emergency Services (Fire, Police, Ambulance, etc)
- Postal Authority

#### **10.2.3 Owner Questionnaire**

A questionnaire will be sent to all abutting property owners of the land to ascertain whether they are supportive of the Proposal and to gauge their interest in the land.

#### **10.2.4 Assessment of Consultation**

Council officers assess the information received from the adjoining property owners and stakeholders.

If a majority of respondents favour the Proposal and the Decision Logic assessment has determined that the Minor Council Property Asset is surplus to Council's requirements in accordance with section 7.2 and 7.3 of the Policy, then the matter will be referred to Council for consideration to commence the process for discontinuance/sale.

### **10.3 Sale Price**

The sale of land from all Minor Council Property Assets is to be transacted on the basis of achieving the current market value for the land as determined by the Council's City Valuer or a Council appointed valuer.

Deviation from this procedure would only be considered by Council where a community benefit can be documented and the community benefit outweighs any loss in financial return. On this basis, an amount lower than the current market value *may* be accepted pursuant to formal resolution at an Ordinary Meeting of the Council after consideration by Council.

The sale price for a Minor Council Property Asset will be established based upon the following considerations:

- the current market value of the land as determined by the Council's City Valuer or Council's appointed valuer
- where a sale price less than market value is sought, demonstration and documentation that the sale of the land will provide benefit to the wider community and that these benefits outweighs any loss in financial return

- any ownership rights which may have already accrued by the purchaser for Reserves that are in the name of original subdividers.

It is understood that the market value for any given Minor Council Property Asset would vary based on the size of the land, its location, its relationship to the purchaser's land, the size of the purchaser's land and whether or not any easements may be required to be placed on title.

#### **10.4 Recovery of Other Costs**

Council will recover all costs incurred as part of the sale of a Minor Council Property Asset.

Costs will be shared equally by the purchasers and will be paid at the same time as the purchase price.

Costs include publication of public notice costs, legal fees, surveyors fees, valuation costs, conveyance costs, State Government fees and charges (such as stamp duty, title registration costs and lodgement fees), and any costs associated with the relocation of fences.

#### **10.5 Division of Land**

When offering the land for sale, it will be on the basis of equal distribution to adjoining owners, with new boundaries being as near as possible to parallel, or right angles to the centre line of the subject land, other than by mutual agreement of the abutting owners and Council approval.

Where more than one abutting property owner is interested in purchasing the land, Council may divide the Minor Council Property Asset into several parcels of land. However, where this is not possible due to the location of drainage or sewerage assets or easements over the land, the land will be allocated and offered for sale in some other proportion as determined by Council. Refer to section 7.3(xii).

If multiple abutting property owners want to purchase the same portion of land and it cannot be divided in a suitable way or an agreement reached by all parties involved with regards to the division, Council may invite each party to submit their own purchase price for the whole section of land abutting their property within a specified time frame. The submission process will generally conform with Council's tender submission process (as also noted in section 10.10 – Council Offer Process).

#### **10.6 Easements, Caveats and Covenants**

Council reserves the right to place any easement, caveat, covenant or creation of easement on or over the land forming rights-of-way, and/or Reserves as it deems fit in order to protect its interests or the interests of other service authorities who may have assets on, below or above the subject land.

#### **10.7 Relocation of Assets**

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

- Statutory Authority assets including, water, gas, sewer, electricity and telecommunications
- Bluestone pitchers (if any), or other re-useable materials (these remain the property of the Council)

- Replacement drainage or new storm water drainage may be required (requests for new stormwater drainage would be referred to the special charge scheme process whereby agreement would be sought from all benefiting properties to contribute to the cost of the works).

### **10.8 In Principle Agreement**

Council officers will write to all interested parties notifying them of the terms and conditions of the sale of the land should it be discontinued and sold.

This letter seeks a commitment from the interested parties. The letter will include:

- agreement to purchase the land at an estimated sale price
- agreement to reimburse all costs
- acceptance of encumbrances that are located within the land, and rights, title or power will remain for statutory authorities
- agreement to payment of any costs relating to the relocation or replacement costs of any asset within the land

The parties will be provided with 28 days to respond. The timeframe for response may be extended by officers at the request of any given party in consideration of personal circumstances.

Officers will assess the feasibility of the proposed sale based on the responses received from the abutting property owners.

If the assessment indicates a majority of abutting properties owners support the discontinuance and sale and/or the evidence, including the financial viability of the project, supports the discontinuance, the matter will be forwarded to Council for consideration and decision to commence the statutory process. If not, all abutting property owners will be notified that Council will not be progressing the matter.

### **10.9 Letter of Offer**

Council officers will write to all interested parties notifying them of the terms and conditions of such a sale. The letter of offer will include:

- copy of title plan
- agreement to purchase the land at the sale price
- agreement to reimburse all costs including conveyance costs
- acceptance of encumbrances that are located within the land, and rights, powers or interests will remain with statutory authorities
- agreement to payment of any costs relating to the relocation or replacement costs of any asset within the land
- agreement to fence the land within their property within 60 days of settlement

All interested parties must provide a written acceptance of these terms within 28 days. If a party doesn't respond within 28 days, it will be assumed that they do not wish to purchase the land and the land will be offered to an alternate adjoining owner.

## **10.10 Council Offer Process**

As stated in section 10.5, if multiple abutting property owners express interest in purchasing the same portion of land and it cannot be divided in a suitable way or if an agreement cannot be reached by the parties involved with regard to the division, Council may send a letter to each party inviting them to submit their own purchase price for the whole section of land abutting their property.

The process for receipt of submissions will generally conform to Council's tender submission process. That is to say, those submissions would need to be placed in the tender box by a nominated date and time and that the tender box will be opened and submissions recorded in the presence of a member of the Procurement unit.

All parties will be advised in writing of the process and the need to make their submissions no later than the date and in the manner specified in the letter.

Submissions of a purchase price that is equal to or less than market value will be considered to be non-conforming.

Submissions may include written material, photographs and/or other evidence to present a case to Council in support of their nominated purchase price.

Where multiple conforming submissions are received, officers will prepare a report to an Ordinary Meeting of the Council presenting the submissions (and supporting documentation, if any) for Council's consideration.

As a matter of course, the officers' recommendation will always be that Council accept the highest purchase price for the land. Council need not follow the officer recommendation and may take into account any matter referred to in the submission when deciding to allocate land as it sees fit.

Where a single conforming submission is received, the land will be offered to the submitter at market value without further reference of the matter to an Ordinary Meeting of Council. The other party/ies which did not submit a purchase price for the land (or submitted a non-conforming submission) will be notified in writing.

Where no conforming submissions are received, all parties will be notified in writing that the sale process will be abandoned. Any request received to purchase the land following the abandonment will start the process again (refer to 10.1).

## **10.11 Payment and Transfer of Title**

### **10.11.1 Terms of Payment**

The full purchase price and all other costs shall be paid by the purchaser to Council prior to Council signing the Transfer of Land documents.

Instalment plans are available to extend the payment, allowing for equal payments for a period of up to four (4) years. An additional administration charge as detailed within Council's annual schedule of fees and charges will be added to cover the administration costs required to facilitate such instalment plans.

At the discretion of the Manager Assets and Properties, after taking into consideration any personal circumstances and financial hardship, the instalment period may be extended up to six (6) years in order to reach agreement to purchase the land.

Instalment plans will be provided to purchasers at no interest or additional cost (other than the set up fee).

#### **10.11.2 Victoria Government Gazette**

Council will arrange for the preparation and placement of a notice in the Victorian Government Gazette in relation to the discontinuance of the status of a Minor Council Property Asset, if applicable.

This notice will include a plan and details of whether land will be retained by Council or transferred

#### **10.11.3 Transfer of Land**

Council officers will undertake the following steps:

- Council solicitor will prepare Transfer of Land documents and forward them to the Council to process
- Council to send Transfer of Land documents and invoice to purchaser
- signed transfers will be returned to Council within 28 days, along with purchase monies, outstanding costs, duty, registration fees, GST and the Purchaser's authority for Council's solicitor to act as the Purchaser's agent solely for the purposes of stamping and lodgement of the transfer of land and filing of the notice of acquisition
- transfers will be executed by Council and monies deposited - receipts will be forwarded to the purchaser or their solicitor
- Council officer will update Council's property register to reflect the land transfer and notify the relevant Council departments to amend their systems as necessary
- Council's solicitor will notify all relevant authorities of the land transfer by notices of acquisition and disposition
- Certificate of Title for the land will be sent to Council to arrange collection by purchaser
- Council will notify the purchaser of land that they are responsible for the cost of fencing the land within their property.

Purchasers will be charged at cost for the work undertaken by Council's solicitor to undertake the transfer of land process.

Upon request, the purchaser may utilise their own conveyancer and/or solicitor to undertake relevant portions of the transfer of land process.

#### **10.12 Land that is Not Sold**

Any land created through the discontinuance or removal of the status of Minor Council Property Assets that is not sold to an abutting property owner continues to vest in Council. Council reserves the right to transfer to itself any land that has been discontinued or vested in Council and not sold at anytime following the discontinuance or vesting, to protect its interests in the land.

In those instances where a sale has not been achieved, Council may agree to lease or licence the land to abutting property owners at market rent (as determined by the City Valuer or Council's nominated valuer).

## **11.0 MANAGEMENT OF ROADS, RESERVES AND OTHER MINOR PROPERTY ASSETS**

Council is responsible for the management and maintenance of all land for which it is the registered owner on title or that may vest in Council. For all other land the following applies.

### **11.1 Maintenance**

The maintenance responsibilities for Minor Council Property Assets are as follows:

- (i) Roads that are constructed of a sealed surface that carry vehicular or pedestrian traffic are the responsibility of Council to clear, clean and maintain including the removal of dumped rubbish.
- (ii) Roads that do not have a sealed surface are not the responsibility of Council to maintain, and it is expected that adjoining owners or occupiers are obliged to maintain this land in a clear and clean state in accordance with Council's General Local Laws.
- (iii) Reserves, where Council is not the owner, are the responsibility of the owner and/or the adjoining property owner/s to maintain in a clear and clean state.
- (iv) Council will take necessary steps to remove any material that may present a fire hazard or a risk to public health, including excess grass and dumped rubbish, or asbestos as determined by the Health and Fire Prevention Officer.
- (v) Matters relating to any dumped rubbish on Minor Council Property Assets will be referred to Council's Local Laws unit to investigate and take enforcement action as required.
- (vi) Where Roads and Reserves are still required for the purpose for which they were reserved, Council may take steps to ensure the land is kept clear and direct that all obstructions or encroachments are to be removed.

### **11.2 Fencing and Gates**

Under the provisions of the *Road Management Act 2004*, Council has no obligation to construct or maintain fencing on land abutting roads or other land defined as a 'road' under the provisions of the *Local Government Act 1989*.

Applications for the installation of a gate or fence to prevent or limit public access to a Minor Council Property Asset will be discouraged.

Council would only consider the fencing and non-lockable gating of Minor Council Property Assets, for which it is the owner or where the land vests in Council, where the installation would not be detrimental to the access needs of Council, service authorities, emergency services or other property owners, or to stormwater flow.

Requests for fencing or gating of Minor Council Property Assets will be ultimately referred to an Ordinary Meeting of Council for consideration.

### **11.3 Unauthorised Occupation and Encroachments**

Council discourages the unauthorised occupation of Minor Council Property Assets.

Officers will engage with occupiers and seek to formalise their occupation of the land either via the discontinuance/sale process or by entering into an agreement to occupy the land in accordance with this policy (section 10.0). All of which is subject to consultation with other adjoining property owners.

If an occupier fails to enter into an agreement with Council to purchase or occupy of the Minor Council Property Asset, the occupier will be instructed to remove all buildings and obstructions from the land and reinstate fencing along property boundaries. Priority will be given to instances where access is required to/via occupied land by members of the public, adjoining property owners or Council and services authorities with need to access their assets.

Should the occupier fail to undertake such, Council may implement 'self help' and remove all buildings and obstructions and reinstate the boundary fence according to property titles. All costs from undertaking this action will be payable by the occupier of the land.

#### **11.4 Construction of Roads**

In situations where Council has identified that an unconstructed road is required for public purposes or has received a request from an abutting property owner for its construction, Council will facilitate the construction of the road and removal of any obstructions or encroachments in the road.

The cost of these works would be funded via a special charge scheme which would seek to share the costs between adjoining properties receiving special benefit from the construction works. There may be instances where Council may contribute to the special charge scheme for the construction due to general benefit being gained to the community.

Any unconstructed road that is constructed via a special charge scheme will be added to Council's Register of Public Roads.

Unconstructed Roads required for public purposes may be added to Council's Register of Public Roads and will attract the level of service for 'unmade roads' as defined in Council's Road Management Plan.

The construction of unmade roads required by a Development Approval is dealt with under section 11.5.

#### **11.5 Developments abutting Unmade Roads**

For developments that abut unmade Roads, the developer will be required to:

- construct any unconstructed road required to service the development
- upgrade any constructed road required to service the development

Once constructed to the satisfaction of Council, the Road will be added to Council's Register of Public Roads.

Council may enter into an agreement to facilitate the construction of the Road. All costs associated with the preparation of such agreement, including legal costs, are to be paid for by the developer.

#### **11.6 Declaring a Right-of-Way a Road under the *Road Management Act 2004***

Council will declare a right-of-way a 'road' under the Road Management Act 2004 in circumstance where the right-of-way is:

- constructed
- clearly required for road purposes by the community
- the primary point of access and egress by abutting property/ies

## **11.7 Unsold and Landlocked Land**

Land that has been discontinued as a Road or Reserve and has not been sold vests in Council in accordance with relevant legislation.

For those parcels of land, where Council access is restricted and the land is deemed to be “land locked”, Council may take steps to acquire title to the land in order to protect its interests in the land and to prevent the land from being adversely possessed.

Council will seek agreement from abutting property owners to obtain access to the landlocked land for maintenance purposes.

## **12.0 DELEGATION / AUTHORITY**

### **12.1 *The Policy***

The Manager, Assets and Properties will be responsible for the implementation and management of this Policy.

The Director, Assets and Business Services may be called upon to resolve issues that may arise from the application of this Policy.

Following a Council resolution to sell Council land, the Chief Executive will be responsible for the signing and sealing of any documents relating to the sale in accordance with the Council resolution.

### **12.2 *Discontinuance and Sale of Roads***

The Manager, Assets and Properties has delegated authority in relation to the discontinuance and sale of Roads, to carry out the referral stage and negotiate ‘in-principle’ agreements for their sale.

The decision to give public notice and the final decision to discontinue Roads and any subsequent sale is not delegated to officers and requires Council resolution.

### **12.3 *Removal of Reserve Status on Land***

The Subdivisions Officer has the delegated authority, in relation to issuing a permit for removal of the reserve status over land and to vest the land in Council.

The delegated authority to remove the reserve status of land via Section 24A of the Subdivisions Act 1988 will only be exercised in accordance with a Council resolution, Council policy or strategy that identifies the land being surplus to Council requirements.

Any application for the removal of the reserve status received by the Subdivisions Officer must be referred to the Manager, Assets and Properties for comment.

## **13.0 POLICY REVIEW**

The policy will be reviewed within three years of its adoption by Council.

## **APPENDIX A – Application to Purchase a Minor Council Property Assets**

# APPLICATION TO PURCHASE A MINOR COUNCIL PROPERTY ASSET

(INCLUDING ROADS, RIGHTS-OF-WAY, DRAINAGE RESERVES OR OTHER MINOR LAND)



the place  
to live

<b>Name of Applicant</b>	
<b>Address of Applicant</b>	
<b>Address for Correspondence</b> <b>(if different from above)</b>	
<b>Contact Telephone (Home)</b>	
<b>Contact Telephone (Between Hours)</b>	
<b>Contact Telephone (Mobile)</b>	
<b>The right-of-way or drainage reserve that I wish to purchase is adjoining property known as:</b>	
<b>What is the nature of the land?</b>	<input type="checkbox"/> <b>Road</b> <input type="checkbox"/> <b>Right-of-Way</b> <input type="checkbox"/> <b>Drainage Reserve</b> <input type="checkbox"/> <b>Other</b> _____
<b>Description of Land:</b>	

**OFFICE USE ONLY**

Applicants Name \_\_\_\_\_ Date received \_\_\_\_\_

File Ref \_\_\_\_\_ Receipt No. \_\_\_\_\_

**Sketch Plan of Road/ROW/Drainage Reserve:**

- Your property's proximity to the land**
- Any pedestrian or vehicular access across the land**
- Locations of buildings or fences including any carports, garages, sheds, or gates**
- Proposed division of the land**

**Please ensure the following items are included with an application:**

- Copy of Certificate of Title for your property**
- Consent of all adjoining owners**
- Reason/s why the land is no longer required**
- Photographic evidence of lands usage**
- All information relating to long term occupation of land (if applicable)**
- Any other pertinent information you wish to provide**
- A sketch plan showing the following information:**
  - **Your property's proximity to the land**
  - **Any pedestrian or vehicular access across the land**
  - **Locations of any carports, garages or gates used for access**
  - **Proposed division of the land**

**Signed** \_\_\_\_\_

**Dated** \_\_\_\_\_

\*Note: Council collects the information on this form so that it may consider and process your application in accordance with section 206, 223 and schedule 10, Clause 3 of the Local Government Act 1989. This information is used by Council to facilitate the administration of the application, which includes the disclosure of the information to Council's agents. Council will not disclose the information to anyone else unless required to by law. You may access this information by contacting Council on 9230 4492.

**OFFICE USE ONLY**

Applicants Name \_\_\_\_\_ Date received \_\_\_\_\_

File Ref \_\_\_\_\_ Receipt No. \_\_\_\_\_