

1.0 AUTHORITY

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Section 24A of the Subdivision Act 1988*
- *Road Management Act 2004*
- *Planning and Environment Act 1987*

The intention of this policy is to ensure that the Mornington Peninsula Shire Council (Council):

- 2.1** Has a consistent, equitable and transparent approach in relation to the Discontinuance and sale of Roads and Minor Reserves within the municipality.
- 2.2** Complies with all legislative requirements and best practice when undertaking the Discontinuance and Sale of Roads and Minor Reserves.
- 2.3** Strategically manages its Roads and Minor Reserves for the long-term best interests of Council and the community.

3.0 SCOPE

- 3.1** This policy applies to all Roads and Minor Reserves within the municipality. It establishes principles for the Discontinuance and Sale of Roads and Minor Reserves.
- 3.2** The Policy does not apply to Council Land held in freehold title or vested in Council, which is managed under the *Sale and Acquisition of Land Policy*.
- 3.3** The sale component of this Policy does not apply for Roads located on Crown land (government roads).

4.0 GOVERNANCE PRINCIPLES

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- Council decisions are to be made and actions taken in accordance with the relevant law
- priority is to be given to achieving the best outcomes for the municipal community, including future generations
- the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted
- collaboration with other Councils and Governments and statutory bodies is to be sought
- the ongoing financial viability of the Council is to be ensured
- the transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

5.1 Introduction

- 5.1.1 Whilst most Roads and Minor Reserves are required for vehicular and pedestrian access or other strategic purposes, Council may support the Discontinuance of a Road or Minor Reserve if it is no longer required for general public access and the Discontinuance is considered to be in the best interest of the community.
- 5.1.2 Council discourages the unauthorised occupation of Roads and Minor Reserves and may take steps to remove illegal occupation.

5.2 Road and Minor Reserves Retention Principles (Retention Principles)

- 5.2.1 All Roads and Minor Reserves are to be retained except where the Road or Minor Reserve:
- 5.2.1.1 Is no longer required for the use it was set aside for;
 - 5.2.1.2 Is no longer reasonably required for general public use;

- 5.2.1.3 Does not, or will not support, facilitate or contribute to Council's current or future land use requirements as identified in the Council Plan or relevant Council Strategy or Plan;
- 5.2.1.4 Does not contribute historic, economic, environmental or community benefit to the municipality;
- 5.2.1.5 Has no strategic significance to Council on a long-term basis;
- 5.2.1.6 Does not contain existing infrastructure, or any infrastructure present can either be relocated, is no longer required, or can be protected through an easement; and
- 5.2.1.7 Is not required for current or future infrastructure

5.3 Considerations for Discontinuance

- 5.3.1 When a Road or Minor Reserve does not meet the Retention Principles it may be considered for Discontinuance and/or sale.
- 5.3.2 Council's powers to Discontinue and sell a Road or Minor Reserve is discretionary, meaning Council in its absolute discretion can refuse to proceed with a Discontinuance application if the Road or Minor Reserve meets the Principles for Retention, regardless of an Approved Development, or in a situation where the Discontinuance is not economically viable. An applicant has no formal rights of appeal to such a decision.
- 5.3.3 Council will only consider the Discontinuance of a Government Road where there is significant community benefit or strategic outcome to justify the decision for Council to carry out the Discontinuance, rather than the State Government noting that the resulting land will vest in the Crown and not Council.
- 5.3.4 Council may require an applicant to enter into a Section 173 Agreement as a condition of the Discontinuance and sale to provide support, access, projections and/or consolidation of title.

5.4 Division of Road or Minor Reserves

- 5.4.1 Where practical, Council will offer the Road or Minor Reserve equally to adjoining owners, except where:

- 5.4.2 an adjoining owner can demonstrate long term continuous and exclusive occupation of the Road or Minor Reserve then the Road or Minor Reserve will initially be offered to that occupying adjoining owner.
- 5.4.2.1 there are services within the Road or Minor Reserve that affect a boundary location and cannot be relocated.
- 5.4.2.2 Council, at its discretion, may not proceed with the Discontinuance and sale if doing so would result in any land becoming landlocked.

5.5 Financial

- 5.5.1 An Applicant must pay a non-refundable application fee and agree to meet all of the Council's reasonable costs associated with the Discontinuance, regardless of whether the application proceeds or not. If an application proceeds to a sale the application fee will contribute to the total sale price.
- 5.5.2 The application fee will be included in the Schedule of Fees and Charges adopted by Council each year as part of the annual budget process.
- 5.5.3 The Applicant will be responsible for all costs associated with the relocation or removal of any assets, infrastructure, fences or other encroachments on the land resulting from a Discontinuance and sale. Council reserves the right to retain any assets from the Road or Minor Reserve.
- 5.5.4 The sale of any land resulting from a Discontinuance must be sold at Market Value determined by Council unless a price below Market Value is considered to provide public benefit and is supported by a Council resolution.
- 5.5.5 If the Applicant can demonstrate continuous and exclusive occupation of the Road or Minor Reserve for more than 15 years, the sale price may be discounted by up to 25% of the Market Value.

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with *the Charter of Human Rights and Responsibilities Act 2006* and aligns with Council's Universal Design Policy 2022.

7.0 ASSOCIATED DOCUMENTS

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Subdivision Act 1988*
- *Limitation of Actions Act 1958*
- *Road Management Act 2004*
- *Planning and Environment Act 1987*
- *Transfer of Land Act 1958*
- Local Government Best Practice Guidelines for the Sale and Exchange of Land
- Council Plan 2025–2029
- Community Engagement Policy
- Sale and Acquisition of Land Policy
- Mornington Peninsula Planning Scheme

8.0 DEFINITIONS

Applicant	means a person, corporation or organisation who submits an application for a Discontinuance and sale of land adjoining their property.
Approved Development	means a development approved under the <i>Planning and Environment Act 1987</i> for land that includes a Road that requires a Discontinuance
Council	means the Mornington Peninsula Shire Council.
Discontinuance	means the exercise of power under Clause 3 of Schedule 10 of the <i>Local Government Act 1989</i> in relation to a Road which is affected by a notice published in the Government Gazette and/or the removal of Reserve status in relation to a Minor Reserve under section 24A of the <i>Subdivision Act 1988</i> .
Government Road	means a Road on Crown land.

Market Value	means the value of the land as determined by a qualified valuer appointed by Council.
Minor Reserves	means a Minor Reserve, for example land set aside as a drainage reserve or revenge strip on a plan of subdivision. It does not include reserves for recreation or open space purposes.
Road	means a road as defined in the <i>Local Government Act 1989</i> and includes public highways at common law.

9.0 POLICY SPONSOR

The Manager – Assets, Buildings and Property is responsible for overseeing the application and review of the Discontinuance of Roads and Minor Reserves Policy.

10.0 DOCUMENT CONTROLS

- 10.1** Council will review the Discontinuance of Roads and Minor Reserves Policy within four years or earlier as required.
- 10.2 Document Version Table**
Summarise the key changes made to the document to provide a quick understanding of the updates.

Document Version Control

Version	Section	Revision Description	Date Revised	Approved by
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Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Shire department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.