

<p>PURPOSE</p>	<p>To establish a framework to assist the Council in the exercise of its statutory functions, duties and powers under the Local Government Act 1989 to discontinue roads within the municipal district, and to make decisions as to whether the land in discontinued roads should be sold, transferred to Council or retained by Council for municipal purposes.</p>
<p>OBJECTIVES</p>	<p>The objectives of this policy are to:</p> <ul style="list-style-type: none"> • establish documented procedures as to how a person may request Council to discontinue a road and how Council itself may initiate a road discontinuance proposal; • ensure that arrangements for the allocation and disposal of land in discontinued roads are carried out in a fair and equitable manner; • ensure transparency, accountability and consistency in Council decision making; • ensure compliance with the requirements of the Act in relation to the performance of the functions of Council and the exercise of its powers over roads.
<p>SCOPE</p>	<p>This Policy applies to any road within the municipal district and pursuant to the powers of the Council as set out in Schedule 10 of the Act.</p>
<p>DEFINITIONS</p>	<p>In this policy:</p> <p>“Act” means the <i>Local Government Act 1989</i>;</p> <p>“applicant” means the person requesting Council to discontinue a road;</p> <p>“Council” means the Mornington Peninsula Shire;</p> <p>“Manager – Property & Valuations” means the person appointed by Council to that position or any person acting in that position;</p> <p>“municipal district” means the district under the local government of Council;</p> <p>“policy” means this policy including any amendments approved by Council;</p> <p>“road” includes (whether in whole or in part):</p> <ul style="list-style-type: none"> • a street; • a right-of-way or lane;

<p>DEFINITIONS (CONT'D)</p>	<p>“road” includes (whether in whole or in part) (Cont'd):</p> <ul style="list-style-type: none"> • any land reserved or proclaimed as a street or road under the <i>Crown Land (Reserves) Act 1978</i> or the <i>Land Act 1958</i>; • a passage; • a cul de sac; • a bypass; • a bridge or ford; • a footpath, bicycle path or nature strip; • any culvert or kerbing or other land or works forming part of the road; and • any land described or set apart as a road by the owner in fee simple in any transfer or conveyance in which the owner granted an easement of right-of-way over such land, despite such road having not existed or presently existing on such land.
<p>STATUTORY PROVISIONS</p>	<p>The schedule attached to this policy is incorporated by reference.</p>
<p>COMPLETION OF PRE-ACT ROAD DISCONTINUANCES</p>	<p>Where Council has previously discontinued a road under the now repealed section 528(2) of the <i>Local Government (Miscellaneous) Act 1958</i>, it is still possible to deal with that land by old Act transfer (in the case of a sale and transfer) or under section 54 of the <i>Transfer of Land Act 1958</i> (in the case of Council wishing to retain the land for a municipal purpose).</p>
<p>POLICY</p>	<ol style="list-style-type: none"> 1. Council will consider the discontinuance of a road having considered the present and future use of the road and the extent and type of past use of the road and the availability of alternate means of access. 2. A road will only be considered for disposal after the road has been formally discontinued. 3. It is entirely at the discretion of Council to discontinue and dispose of a road. 4. A decision to discontinue and dispose of a road 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.

PROCEDURE	<p>Applications for Discontinuance</p> <p>An application for the discontinuance and sale of a road must:</p> <ul style="list-style-type: none"> • be made in writing to Council; and • generally be supported by evidence that the owners and occupiers of land abutting or immediately adjacent to the road have been consulted in relation to the proposed discontinuance and disposal. <p>Assessment</p> <p>On receipt of an application, the Manager – Property & Valuations (following appropriate internal referrals to Council Departments and based on the responses received from those Departments) must determine that there is overall public benefit in the proposal and that the road is not reasonably required for public use.</p> <p>In assessing ‘overall public benefit’ of the road, issues to be considered include:</p> <ul style="list-style-type: none"> • the current use; • potential future use; • vehicular and pedestrian access needs; and • current and future use by public authorities. <p>If the Manager – Property & Valuations concludes that there is public disbenefit, the application will not be considered any further, and the applicant will be advised in writing of the decision and the reasons for the decision.</p> <p>If the Manager – Property & Valuations concludes that there is overall public benefit, the following further procedural requirements will apply:</p> <ul style="list-style-type: none"> • a valuation of the land in the road must be obtained from a person who holds the qualifications or experience specified under section 13DA(1A) of the <i>Valuation of Land Act 1960</i>, • the valuation, which must reflect the market value of the land, must not be more than six months old prior to the proposed sale and must be undertaken on a ‘highest and best use’ basis; • the sale price will be no less than the valuation; • GST will be applicable on any sale and is payable by the applicant;
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<p>PROCEDURE (CONT'D)</p>	<p>Assessment (Cont'd)</p> <ul style="list-style-type: none"> any costs in relation to the discontinuance and sale including survey fees and legal costs are payable by the application; In most cases, the applicant will be required to consolidate the discontinued road with their adjoining property. <p>Acceptance</p> <p>Subject to the applicant agreeing in writing to accept the terms and conditions of the policy in relation to the proposed discontinuance, officers will commence the statutory procedures under the Act to discontinue the road and to sell the land in the road to the applicant or other adjoining land owner.</p> <p>If no objections are received for the discontinuance and disposal of the road and the sale price is less than \$25,000.00 (Twenty-Five Thousand Dollars), the Manager - Property and Valuations and Director – Sustainable Organisation can, under delegation, determine to discontinue and dispose of the road.</p> <p>If objections are received, Council must determine on the discontinuance after having considered the submissions received pursuant to Section 223 of the Act.</p> <p>Where an application for the discontinuance of a road is made by Council</p> <p>Council may in circumstances that it considers appropriate initiate a road discontinuance proposal itself, in which case Council will comply with this policy with such modifications as the Manager – Property and Valuations considers appropriate, having regard to the interest of Council in the discontinuance.</p>
<p>RESPONSIBILITY</p>	<p>Manager – Property and Valuations</p> <p>For ensuring the Policy is implemented and reviewed regularly and for processing requests under delegated authority.</p> <p>(Council may in accordance with Section 98 of the Act delegate to a member of the Council staff any power, duty or function under this policy, other than any power, duty or function under section 223 of the Act.)</p> <p>Council</p> <p>For considering and determining requests for property that cannot be satisfied under delegation.</p>

<p>RESPONSIBILITY (CONT'D)</p>	<p>Manager - Infrastructure Strategy</p> <p>Manager - Recreation & Leisure</p> <p>Manager - Infrastructure Maintenance</p> <p>For assessing the future needs and requirements of the road and suitability for sale.</p>
<p>RELATED POLICIES</p>	<p>Nil.</p>
<p>RELATED LEGISLATION</p>	<p>Local Government Act: this Act will apply to all applications.</p> <p>Transfer of Land Act 1958: this Act will apply if Council wishes, following a discontinuance, to transfer the land in a discontinued road for which Council has already taken title. In relation to such transfers, section 189 of the Local Government Act 1989 should be noted.</p> <p>Subdivision Act 1988: this Act will apply if a subdivision or consolidation of land is required which includes the land in a discontinued road.</p>
<p>OTHER ROAD DISCONTINUANCE POWERS</p>	<p>This policy does not apply to the discontinuance of roads under section 44 of the Planning and Environment Act 1987 (where Council as a planning authority may discontinue (or close) a road by amendment to the Mornington Peninsula Planning Scheme), under section 12 of the Road Management Act 2004 (where Council as a co-ordinating road authority may, in accordance with that section, discontinue a public road) or under section 399 of the Land Act 1958 (where a road set out on Crown land may be closed with the consent of Council).</p>
<p>REVIEW</p>	<p>This Policy shall be subject to review within 12 months of the next general Council election to be held in November 2012.</p>