

6.2.8 Road Discontinuance and Sale Abutting 40 Jefferson Road Garfield

Responsible GM: Debbie Tyson
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Recommendation(s)

That Council having given public notice of a proposal to discontinue a part of Jefferson Road, Garfield as shown in Attachment 1 (the Proposal) and to sell the land, if discontinued, to the abutting landowner at 40 Jefferson Road Garfield by private treaty pursuant to s223 of the Local Government Act 1989 and s114 of the Local Government Act 2020, having considered no submissions being made in respect of the Proposal, hereby:

1. discontinues the Road in accordance with section 206, schedule 10, clause 3 of the *Local Government Act 1989*;
2. directs that the land from the road be sold by private treaty to the abutting landowner of 40 Jefferson Road, Garfield in accordance with section 114 of the *Local Government Act 2020*;
3. directs that a notice of discontinuance be published in the Victorian Government Gazette;
4. authorises the Chief Executive Officer to finalise the terms of the sale of the land and sign all documents relating to the sale of the land from the discontinued road to the abutting landowner at 40 Jefferson Road, Garfield;
5. directs that the discontinuance and sale will not affect any right, power or interest held by Ausnet Services and Cardinia Shire Council in the land in connection with any services and drainage in or near the road; and
6. directs that the section of road be removed from Council's Register of Public Roads in accordance with section 17(4) of the Road Management Act 2004 as it is no longer reasonably required for general public use.

Attachments

1. Attachment Plans and Imagery [6.2.8.1 - 3 pages]
2. Road Discontinuance Policy V 2 2021 [6.2.8.2 - 6 pages]

Executive Summary

Council at its ordinary meeting held on the 21 August 2023, resolved to commence community engagement and consultation in accordance with s114 of the Local Government Act 2020 and s207A, Schedule 10 clause 3 and s223 of the Local Government Act 1989 for a proposal to proceed with negotiations to discontinue a 491.4m² section of road and sell to the abutting landowner at 40 Jefferson Road Garfield, hereafter called the 'Proposal'.

In accordance with the above statutory procedures and Council's Community Engagement Policy 2021-24, public notice of the Proposal was given in the Pakenham Gazette on the 23 August 2023 and on Council's website. The notice on the website remained for the duration of the 28- day submission period.

In addition, surrounding property owners and occupiers were advised of the Proposal in writing, informing them of their right to make a submission.

In response, there were no submissions received in respect of the Proposal and therefore we seek approval from Council to proceed with the Proposal to discontinue the section of road and to sell the land to the abutting landowner.

Background

Section 114 of the LGA 2020 provides the power for Council to sell land, section 206 and Clause 3 of schedule 10 of the LGA 1989 provides the authority for Council to discontinue a road or part thereof and sell it to a third party or retain it for municipal purposes. The property owner at 40 Jefferson Road Garfield has contacted Council's Property Team, in hopes of purchasing the 491.4m² section of road abutting their land, which is currently part of Council's road reserve.

The section of road is shown on certificate of title volume 09856 folio 424 being road on Plan of Subdivision LP213555F.

The internal referral process found no objections from Statutory Planning, Environment, Engineering and Traffic teams at Council. It was identified that a 2m drainage easement in favour of Council would be required along the southern boundary of the section of road if discontinued. The external referral process identified an Ausnet Services easement would also be required to be created, should the discontinuance and sale proceed.

The current market value is \$114,000 provided by Westlink Consulting as per the valuation report dated 23 March 2023. The sale price offered is in line with 4.9(A) of the Road Discontinuance Policy 2021.

A letter of intent has been accepted by the landowner of 40 Jefferson Road Garfield, for the purchase of the section of road for \$57,000, also agreeing to Council's conditions requiring the purchaser to consolidate the land within their parcel and agreeing to reimburse Council for associated costs in discontinuing the road and selling the land. See imagery attached for further context in relation to the section of road and surrounding land.

Policy Implications

Council's Road Discontinuance Policy, which was adopted on the 10 March 2021, outlines circumstances being considered in this report. See attachment for full policy which outlines under 4.7 general principles which apply to the sale of roads:

- (i) Council will encourage the sale of such minor parcels of land that are not being used for pedestrian or vehicular access or are no longer required for other strategic or public use.
- (ii) Council discourages the unauthorised occupation of roads or minor reserves and may take steps to remove such illegal occupation.
- (iii) Council will only sell roads or minor reserves to abutting property owners.
- (iv) Council or its Solicitors shall recover all costs incurred in the application of this policy.
 - a. Council reserves the right to retain any road or minor reserve once they take title to such land, if it is seen to be appropriate. This land may be retained to meet a strategic need or sold at some point in the future in accordance with this Policy.
 - b. Council has the right to place an easement or covenant on or over the land in order to protect existing rights or future requirements. If there is a requirement by statutory authorities to relocate such assets (e.g. drains) all costs will be borne by the purchaser.
 - c. Council will require any land that is purchased to be consolidated with the abutting land title within six months of the purchase of the land.

- d. Council will not recognise or assist with adverse possession claims over roads and minor reserves and reserves the right to contest such claims.

Prior to deciding whether or not to discontinue the Road and sell the land, Council is required to undertake procedures under section 206, schedule 10, clause 3 of the *Local Government Act 1989*, and section 114 of the *Local Government Act 2020*, particularly community engagement.

Relevance to Council Plan

5.1 We practise responsible leadership

5.1.2 Manage our finances responsibly and leave a positive legacy for future generations.

Consultation/Communication

In accordance with the above statutory procedures and Council's Community Engagement Policy 2021-24, public notice of the Proposal was given in the Pakenham Gazette on the 23 August 2023 and on Council's website. The notice on the website remained for the duration of the 28- day submission period.

In addition, surrounding property owners and occupiers were advised of the Proposal in writing, informing them of their right to make a submission.

Financial and Resource Implications

The income generated from the sale would be \$57,000. Council recovers costs associated with the discontinuance and sale if it proceeds. During the process of negotiating with purchasers, the purchaser agrees in writing to pay or reimburse the relevant fees and charges associated, these including;

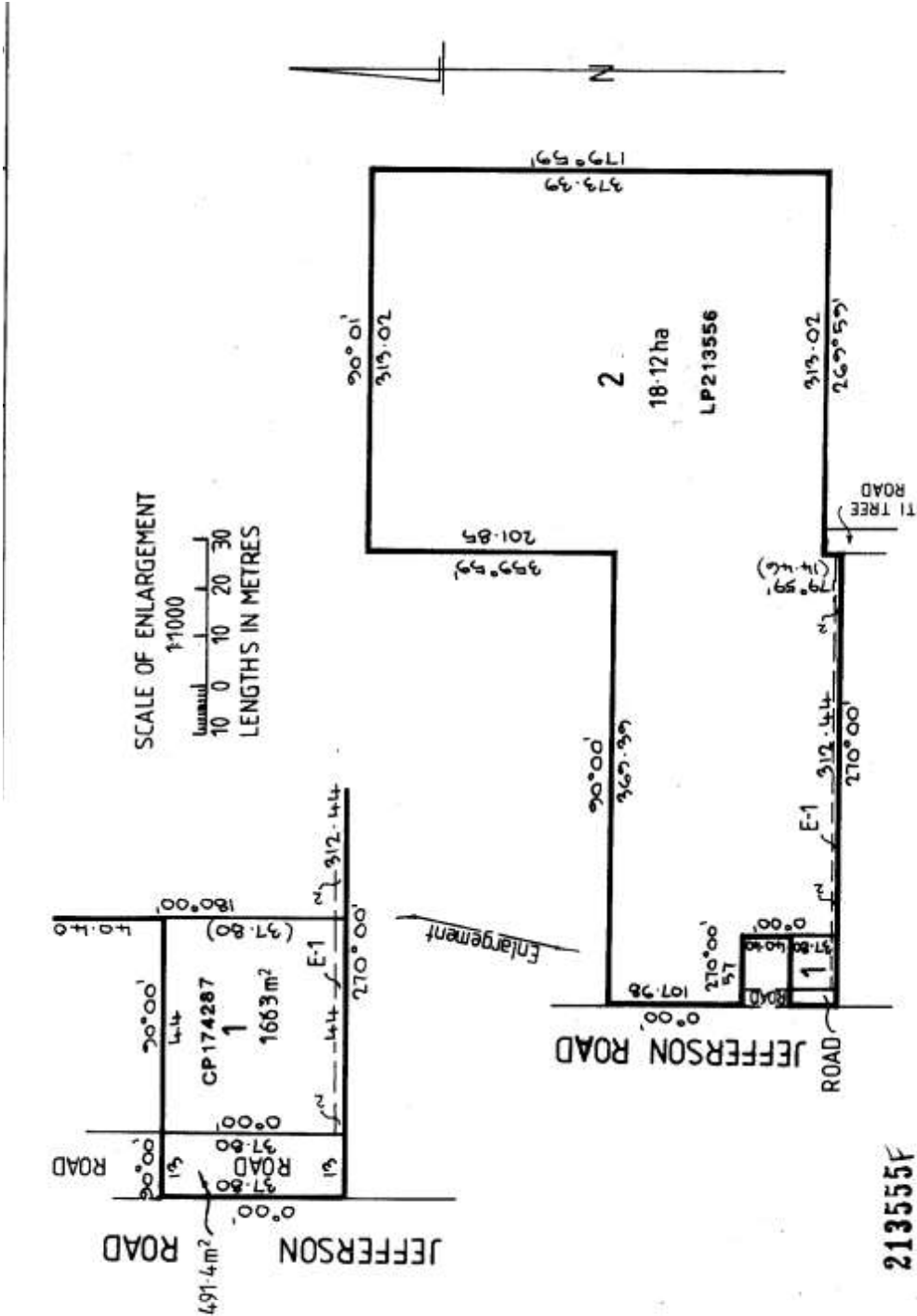
- Surveyor's costs;
- Council's legal fees;
- Public notice;
- Government Gazette notice;
- Reimbursement of valuation fees and
- Preparation of transfer documentation including title registration costs.

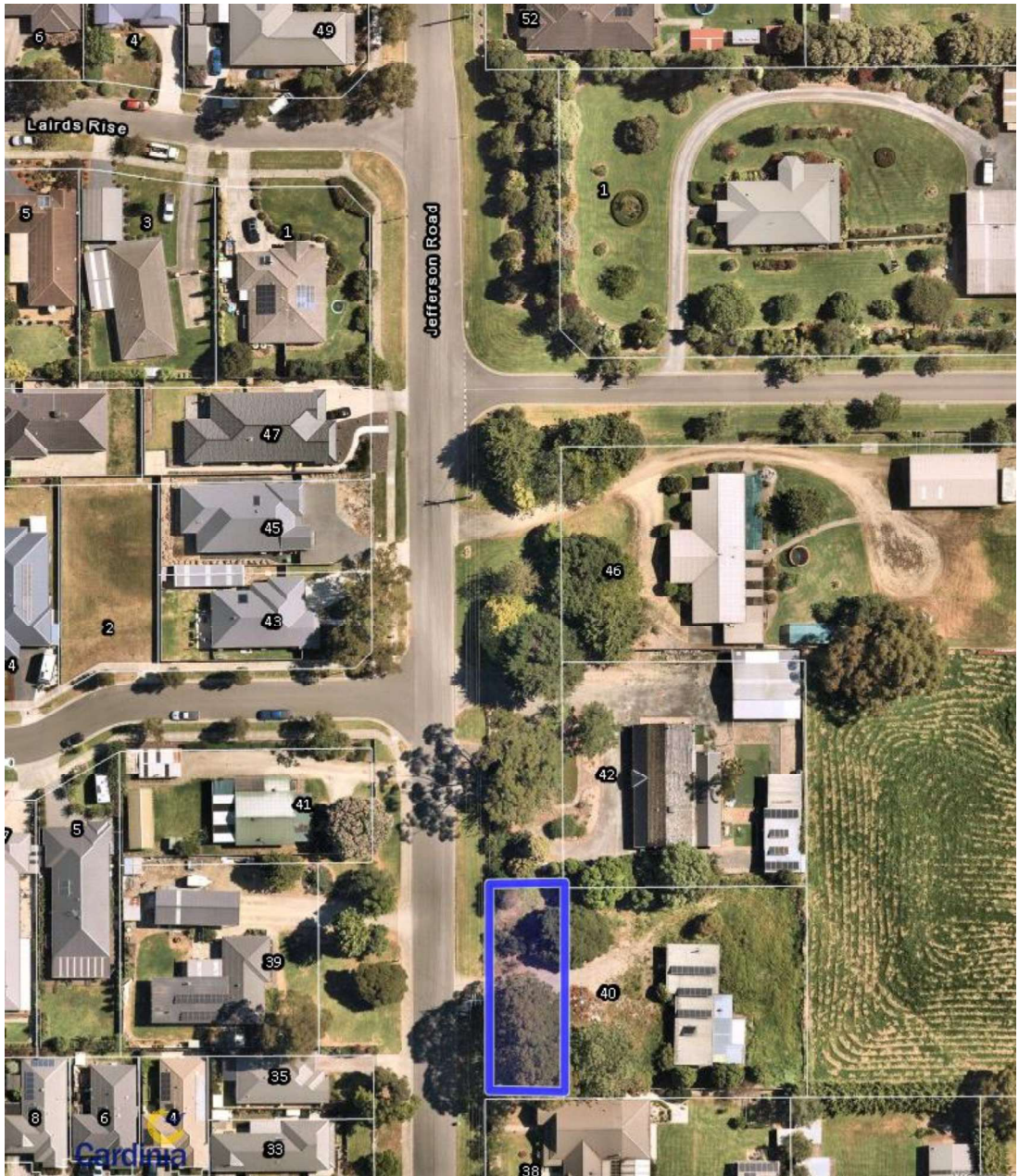
Conclusion

Officers are of the view that, having undertaken a community engagement process in accordance with the Council's *Community Engagement Policy* and having complied with all required statutory procedures under the *Local Government Act 1989* and *Local Government Act 2020*, together with a consideration of all relevant matter, it is open for Council to discontinue 491.4m² section of road for all reasons set out in this report and sell the land to the abutting landowner of 40 Jefferson Road, Garfield by private treaty. Accordingly, it is recommended that Council discontinue and sell the land as proposed.

Attachment – Road Discontinuance and Sale Abutting 40 Jefferson Road Garfield

Lodged Plan 174287F









Road Discontinuance Policy 2021

Record ID	REC-0003480428		
Policy owner	Governance		
Adopted by	SLT (internal)		
Adoption date	10/03/2021	Scheduled review date:	10/03/2025
Publication	External - RMC and website		
Revision/version number	Version 2.0		

A policy is a broad statement of intent that enables decision making by providing clear direction of what will or will not be done. A policy defines Council's position and role, provides the framework for a consistent approach, and guides decision making. This template contains the minimum requirements; you may need to include additional sub-headings to cover specific policy requirements.

If you are looking to develop an 'approach' document, and/or an action plan, you need a strategy not a policy; please use the 'General strategy' template instead.

1 Policy alignment

The following key vision statement articulated by "Our Vision" in the Cardinia Shire Council Plan 2020 underpins this Policy.

'Cardinia Shire will be developed in a planned manner to enable present and future generations to live healthy and productive lives and to enjoy the richness of the diverse and distinctive characteristics of the Shire.'

2 Purpose

The Road Discontinuance Policy (Policy) establishes guidelines for Council Officers when assessing the suitability of an application to Council to discontinue a road and remove the reserve status from the road or other minor reserve with a view to selling the land to a resident.

3 Scope

The Policy will apply to all enquiries and applications received by Council from any interested parties to purchase Council land that is designated as a road reserve or minor reserve, such as a drainage reserve or tree reserve, and which is considered to be unused and no longer required for purpose.

4 Policy description

4.1 Objective

To provide guiding principles for Council Officers and interested parties to facilitate the discontinuance and sale of roads or the removal of reserve status from minor reserves and sale of such land.

In the interest of enhancing land usage and improving both public safety and personal security, Council supports the discontinuance and sale of roads and the removal of reserve status and sale of minor reserves which are no longer reasonably required for public use.

To ensure they are dealt with in a manner that is impartial and consistent, the Policy establishes principles for consultation, achieving an equitable return and ensuring an opportunity for better utilisation of such parcels of land.

4.2 Background

Roads and drainage reserves were developed to satisfy an historical need and are documented in plans of subdivision. In some cases, this need no longer exists. Council is supportive of the discontinuance of roads or the removal of reserve status and sale of minor reserves if such land is not required for the following purposes:-

- access;
- forming part of the assets of any Statutory authority including Melbourne Water, South East Water, Yarra Valley Water, Telstra, Citipower, Comdain Gas, APA and Ausnet, etc.;
- road to be constructed and maintained by Council;
- strategic value to Council either now or potentially in the future; or
- generally required for municipal purposes.

If such land is not required for the above reasons, it will be considered in accordance with this Policy.

4.3 Scope of Policy

This policy will apply where Council Officers consider that roads or minor reserves may not be required for the purpose they were set aside for. It documents the principles to be considered and process required for the sale of such land.

The application of this Policy is for the following categories of Council's assets:-

- (i) Any Road within the municipal boundary;
- (ii) Drainage reserves, tree reserves or other similar minor parcels of land.

4.4 Definitions

In this Policy the following definitions apply:-

"ROAD" is as defined in Section 3 of the *Local Government Act 1989* (LGA). The term "road" includes, but is not limited to, a right of way, laneway, street or footpath, either used for vehicular or pedestrian access, or both.

"MINOR RESERVE" means a reserve set aside for drainage and to mitigate flood levels, or some other minor reserve such as a tree reserve and does not include reserves set aside for recreational or open space purposes.

4.5 Legislative Requirements

Various relevant legislation defines the processes to be carried out for the sale of land, but the following specific sections are relevant to the sale of such local government property:-

- *Section 189* of the *LGA* provides the power for Council to sell land. This section includes requirements to carry out a consultation process and to hear submissions associated with such, under *section 223* of the *LGA*
- *Section 206 and Clause 3 of schedule 10* of the *LGA* provides the authority for Council to discontinue a Road or part thereof and sell it to a third party or retain it for municipal purposes.
- Council also has the power under *Section 24A* of the *Subdivision Act 1988* to initiate procedures to remove the reserve status and vest in itself all or part of a minor reserve, which will allow for it to sold to a third party.

4.6 Council's role

Council has two roles in relation to roads and minor reserves.

- Cleaning and maintenance of such land; and
- The discontinuance and sale of such land; or
- Removal of Reserve status and sale of such land.

Council may initiate road discontinuance, removal of reserve status or respond to an application from interested parties in relation to such land.

The achievement of the objectives of this Policy will:

- (i) reduce Council's long term financial and legal liability for this land (ie. maintenance, cleaning, public liability);
- (ii) improve local amenity for residents (eg. increasing security of property by elimination of access points);
- (iii) formalise ownership of roads and minor reserves, providing a clearer control of the land and allocation of obligations; and
- (iv) provide additional revenue generated from reduction in legal and financial liability.

4.7 General principles

The following general principles will apply for the sale of roads or minor reserves:-

- (i) Council will encourage the sale of such minor parcels of land that are not being used for pedestrian or vehicular access or are no longer required for other strategic or public use.
- (ii) Council discourages the unauthorised occupation of roads or minor reserves and may take steps to remove such illegal occupation.
- (iii) Council will only sell roads or minor reserves to abutting property owners.
- (iv) Council or its Solicitors shall recover all costs incurred in the application of this policy.
 - a. Council reserves the right to retain any road or minor reserve once they take title to such land, if it is seen to be appropriate. This land may be retained to meet a strategic need or sold at some point in the future in accordance with this Policy.
 - b. Council has the right to place an easement or covenant on or over the land in order to protect existing rights or future requirements. If there is a requirement by statutory authorities to relocate such assets (eg. drains) all costs will be borne by the purchaser.
 - c. Council will require any land that is purchased to be consolidated with the abutting land title within six months of the purchase of the land.
 - d. Council will not recognise or assist with adverse possession claims over roads and minor reserves and reserves the right to contest such claims.

4.8 Division of land

If appropriate, all abutting owners will be given equal opportunities to purchase such minor land holdings that abut their property.

a. Unoccupied land in a discontinued road

- (i) Land within a discontinued road shall, where practical, be offered in equal proportions to those property owners which abut or adjoin the land.
- (ii) In the event that Council is unable to allocate the land as described above, due to the location of assets etc. preference shall be given to:-

- the original applicant
- those properties which have express rights over the land via title.
- (iii) If an abutting property owner does not wish to take up Council's offer to purchase the land, then that portion shall be offered to other abutting or adjoining property owners.
- (iv) Council will not proceed with a road discontinuance and sale that creates landlocked land that cannot be sold to an abutting owner.

b. Occupied land in a discontinued road

- (i) Land in a discontinued road which has been occupied for a period less than 15 years, shall be offered as if it were unoccupied.
- (ii) Land which has been exclusively occupied and fenced for a period greater than 15 years, shall be offered to the abutting property owner occupying that land. Should such owner not wish to take up Council's offer to purchase the land, that portion shall be offered to the other abutting property owner, save for any possessory rights.
- (iii) Where no agreement can be reached between the parties above for the purchase of any portion of land, the land shall remain vested in Council until such agreement can be reached. The owner(s) of any property in occupation of the land may be directed to remove all buildings and obstructions from the land immediately, as is Council's right as owner of the land.

4.9 Return and costs

A. Sale of Land

Council will sell all land at market value. However, Council may accept a lower sale price if it is considered that the benefits that accrue to the community by the achievement of one or more of the objectives of this policy are not reasonably obtained unless a lower sale price is received.

If an owner-occupier can demonstrate continuous exclusive occupation of the road or reserve in excess of 15 years the purchase price may be set at 50% of the current market value.

B. Costs

All costs associated with the discontinuance and sale of roads or the sale of minor reserves is to be shared by applicants. This will include costs such as:-

- Legal fees;
- Public notice;
- Government Gazette notice;
- Survey costs;
- Title registration costs; and
- Valuation fees.

C. Replacement Costs

The relocation or replacement costs of any assets within a section of land, will be borne by the purchaser. These will include the following:-

- Statutory authority assets including Melbourne Water, South East Water, Yarra Valley Water, Comdain Gas, Telstra, Ausnet, APA or Citipower etc.
- Bluestone Pitches (if any) or other re-useable materials, as these may remain the property of the Council, as assessed.
- Replacement drainage or relocation of drainage, if required.

D. Transfer of Title

Transfer of Land documents for the discontinued portions of road shall be prepared by Council and forwarded to the purchaser once the purchase price and any costs or fees are paid in full.

The purchaser shall be responsible for the lodgement of the Transfer and payment of all stamp duty and lodgement fees. Professional services via legal practitioner or conveyancer will be required to facilitate lodgement of the Transfer and associated documentation.

E. Terms payment

The full purchase price shall be paid to Council at the time of settlement, except, in extraordinary circumstances where terms may be extended to allow equal payments. The transfer of land shall not be passed on to the purchaser until the purchase price plus any costs or additional amounts are paid in full.

F. Goods and Services Tax

In accordance with the provisions of the *Goods and Services Tax Act 1999*, the sale of Council property, including the sale of roads or minor reserves, will generally attract GST from 1 July 2000. This obligates Council to ensure that GST is added on to the sale price.

4.10 Authority

The Governance Manager will be responsible for the implementation and management of this Policy and the relevant procedures.

Where agreement cannot be reached with abutting property owners, Council Officers shall conduct Conciliation Meetings where appropriate, prior to the formal hearing of submissions by Council.

The Senior Leadership Team may be called upon to resolve issues that may arise from the application of this Policy.

4.11 Sunset Clause

The policy will be reviewed in four years.

4.12 Responsibilities

Councillors and Senior Management have responsibility to promote the principles of the Policy and Officers are responsible to administer the Policy

5 Compliance

Officers will ensure Compliance with the Policy by means of internal referrals and external referrals to various Authorities, appropriate public consultation and implementing necessary measures available with Land Use Victoria and related Statutes.

5.1 Recourse for non-compliance

If Council does not have a consistent approach to assessing the suitability of an application there is a risk of inequity to the residents and failure to suitably complete the application.

6 Related documents

Type of document	Title and/or RMC link
Commonwealth/Victorian	Local Government Act 1989

legislation	Subdivision Act 1988 Planning and Environment Act 1987
Strategic directions paper	(If developed)
Policies	
Strategies	Property Strategy
Guidelines	
Procedures	

7 Glossary of terms

“ROAD” is as defined in Section 3 of the *Local Government Act 1989* (LGA). The term “road” includes, but is not limited to, a right of way, laneway, street or footpath, either used for vehicular or pedestrian access, or both.

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