

Discontinuance and Sale of Roads, Rights of Way and Drainage Reserves Policy

VERSION NO / APPROVAL / DATE	Version 1 – Adopted by Council 11 December 1995 Version 2 - Amended by Council 26 May 2008 Version 3 – Amended by Council 4 May 2010 Version 4 – Adopted by Council 22 May 2017
TRIM REF	17/40422
RELEVANT POLICY	10/43602
REVIEW	30/6/2021
RESPONSIBLE EXECUTIVE	General Manager City Assets and Environment
POLICY OWNER	Manager Property Arts and Leisure Services

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1. Introduction

This policy is to provide guiding principles to facilitate the sale of disused roads, reserves or minor parcels of land in the City of Kingston. Many of Councils roads and drainage reserves were set out in early plans of subdivisions and are no longer needed for the purpose set out in those plans and / or a Council purpose.

2. Purpose

The purpose of the Discontinuance and Sale of Roads, Right of Ways and Drainage Reserves Policy is to facilitate the discontinuance and disposal of roads and reserves that are no longer reasonably required for access or for the purpose they were originally set aside for or for any other public purpose.

3. Scope

To provide guiding principles to facilitate the sale of minor parcels of land such as discontinued roads and drainage reserves that are no longer required for access or strategic purposes.

4. Definitions

“Right of Way” (ROW) means a road as defined in section 3 of the Local Government Act 1989.

‘Reserve’ means drainage and other reserves not set aside for recreational purposes.

‘Road’ has the same meaning as specified in Section 3(1) of the Local Government Act 1989.

5. Procedure / Guidelines

The following principles apply to the discontinuance process:

5.1 Commencement of Statutory Procedures

If the Manager Property Arts and Leisure Services believes that a road, right of way or reserve is no longer reasonably required for the purpose for which it was set aside, he or she may commence statutory procedures to either discontinue and sell by private treaty, public tender or public auction or retain for municipal purposes. The Discontinuance shall be advertised by Public Notice with directions for those interested parties to make submissions to Council. Council will also write to adjoining property owners informing them of its proposal to discontinue the road, right of way or reserve and place a sign on the land where reasonably practical.

5.2 Submissions

In the event that submissions are received in response to a proposal to discontinue a road, a report shall be prepared and submitted to Council for consideration and appointment of a Committee of Council to consider the submissions and report back to Council.

5.3 Valuations

Prior to completion of statutory procedures a valuation will be undertaken. Valuations based on current market values may be used for a maximum of 6 months from the original valuation date. If negotiations have not have been completed within this time then new valuations will be conducted.

5.3.1 Market Value

The market value of the land shall be determined by a Certified Practising Valuer on the basis of the “before and after method” taking into consideration commonly and legally accepted methodology.

5.3.2 Disagreement

If a prospective purchaser disagrees with the valuation on which the purchase price is based, he/she may submit an independent valuation prepared by a Certified Practising Valuer to the Manager Property Arts and Leisure Services. The Manager Property Arts and Leisure Services will consider the independent valuation provided and may (but in no way is obliged to) amend the purchase price if he/she considers it appropriate.

5.4 Sale of land from Discontinued Roads and Reserves

Sections of roads or reserves will be offered for sale at market value less any applicable price reductions provided for in this policy.

Letters to owners shall invite replies within sixty (60) days of the date of the letter. If no reply is received within this period, those owners shall be deemed to be un-willing to purchase that section of land offered to them.

The price affixed by Council on any portion of road shall not be less than the amount fixed annually by Council in its Schedule of Fees & Charges.

5.5 Allocation and division

Land is to be offered as near as is practical, equally amongst abutting owners. Where a property owner is found to have been in clear occupation of the same area for at least the last five (5) years, that owner may be offered first opportunity to purchase the land. Council reserves its right to apportion the land at its sole discretion.

Should an abutting owner not wish to purchase the portion of land offered, that portion may be offered to another abutting owner.

Should the other abutting owner also not wish to purchase that portion, the land may be offered to the adjoining properties on either side of the immediate abutting properties.

In the event that a portion of land would become landlocked if Council were to sell other portions of the discontinued road, the sales process shall be deferred until resolved.

Should both abutting owners wish to purchase only the entire section of land offered to them, both parties will be invited to submit an offer for that section within ten (10) working days of the date of the subsequent invitation to treat. Offers shall not be less than the sum of the original offers conveyed by Council.

Offers received which provide the most equitable return to Council may be accepted by the Manager Property Arts and Leisure Services on behalf of Council.

Where no agreement can be reached for the purchase of any portion of the land, the land shall remain vested in Council until such agreement can be reached. The owners 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 property.

6. Price Reductions

6.1 Part A

6.1.1 Occupied Land

Council may reduce the price for land that has been enclosed by the adjoining property owner.

6.1.2 Over 15 years

Prospective purchasers who can provide proof of continuous occupation of the road or reserve for over 15 years are eligible for a reduction of 20% of the Market Value.

6.1.3 Over 10 Years but less than 15 years

Prospective purchasers who can demonstrate occupation for a period greater than 10 years but less than 15 years are eligible for a reduction of 10% of the Market Value.

6.1.4 Less than ten years

NO reductions apply

In order to qualify for the price reduction on parcels claimed to have been occupied, property owners are required to supply a Statutory Declaration which would be sufficient to satisfy the Registrar of Titles attesting to the extent of the occupation plus other supporting documentation.

No discount is available to a prospective purchaser who is occupying land who has been directed to cease occupation of that land.

6.2 Part B

Once Only Incentive

Further to the above mentioned price reduction for occupied land, Council offers an additional “once only” 50% discount from the market value of the parcel in order to expedite the closure and eventual sale. If the offer is rejected Council will not offer the discount again to that land owner. The discount does not apply to non-residential property.

7. Costs

All costs incurred by Council in association with the discontinuance and sale process are to be shared equally amongst the applicants. Typical costs include legal fees, survey costs, Land Registry costs, administrative costs and valuation fees.

Where a parcel of land that was formerly a reserve is transferred, the above amount shall include licensed surveyor’s fees and subdivision costs, equally apportioned between all purchasers.

Each purchaser shall bear their own legal and conveyancing costs associated with the transfer of the land. The purchaser shall be responsible for the preparation and lodgement of the Transfer of Land document and payment of applicable stamp duty.

Further reductions may be applied by the Manager property Services or General Manager City Assets and Infrastructure at their discretion. Proposed price reductions that would provide a discounted purchase price of more than 10% from that which is provided for in this policy will require a report to Council.

8. GST

The sale of a road, right of way or reserve will generally attract GST at the prevailing rate in accordance with the GST Act 1999 and therefore GST will be added to the sale price.

9. Land Settlement and Date

The full purchase price of all land sold shall be paid to Council at the time of settlement.

Transfer of the land shall not be completed by Council until the full purchase price including associated costs and any interest are paid in full to Council.

The purchaser is encouraged to consolidate the titles.

10. Other Principles

Where the discontinued road or reserve is not able to be sold immediately, an application may be prepared for obtaining duplicate Certificate of Title from Land Registry in Council's name.

Council discourages the unauthorised occupation of roads, ROWs and drainage reserves and may take steps to remove such illegal occupation. Where Council resolves not to discontinue the land, steps may be taken to ensure that the land becomes and remains accessible for the purpose for which it was set aside, including directing removal of any obstructions or buildings from the land in accordance with clause 207 and section 11 of the Local Government Act 1989.

Council has the right to place an easement, covenant, creation of an easement on or over the land in order to protect its existing or future interest in the land.

If there is a requirement by a statutory authority to relocate any assets within the subject land all costs will be borne by the purchaser.

As a condition of sale, Council may require a purchaser to grant an easement in either its or other infrastructure authorities' favour over all or part of the land being transferred, which must be registered on title. The purchaser may be required to pay for the cost of the preparation and lodgement of the creation of easement document(s) at the Land Registry.

If there is an established community use or other Council use for the land it shall not be sold.

11. Responsibility

Property Services

Manager Property Arts and Leisure Services

12. References and links to other documents

Local Government Act 1989

Under clause 3, schedule 10 of the Local Government Act 1989, Council has the authority to discontinue a road or right of way, or part thereof and sell it to a third party or retain it for municipal purposes.

Subdivisions Act 1988

Council has the power under Section 24A of the Subdivisions Act 1988 to initiate procedures to remove and vest in itself all, or part of a drainage reserve, or sell it to a third party.

Planning and Environment Act 1987

A road may be closed by an amendment to the Planning Scheme under Part 3 section 44.

Land Act 1958

Council is required to advise if it concurs with the Crown to discontinue a Government road under section 349. If a Government road is discontinued it becomes the freehold property of the Crown and may be sold by the Crown.

Road Management Act 2004

Council is required to establish a Register of Public Roads which includes those roads considered Right of Ways.

Limitation of Actions Act 1958

No adverse possession claims against a Council.

13. Appendices

Step 1.

- Either receive an application or determine that a right of way is no longer required for any public purpose.

Step 2.

- Confirm land title details and consult with internal departments.

Step 3.

- Consult with external Service Providers.

Step 4.

- Obtain valuation information and write to interested purchasers to ascertain interest in potential sale transactions.

Step 5.

- Place Public Notice as required under S223 and write to objecting and interested parties regarding submission and advising of entitlement under S223 to make submissions to a Committee.

Step 6.

- Review submission if received.

Step 7.

- If no submission received, undertake the necessary procedural steps to complete the formal procedures. Including Gazettal and execution of all relevant documentation.