How will the land be allocated?
In most instances abutting property owners have equal carriageway entitlement over a road (right of way). Wherever practicable, the land contained in the discontinued road or drainage reserve will be distributed to abutting landowners on a 50/50 basis. However, where service assets are located in the land, it may not always be possible to divide the land equally because boundary fences need to be kept clear of the service asset. In such cases, the land will be allocated and offered for sale in some other proportion as determined by Council. Preferential allocation of land will be made to the owner of abutting property who can demonstrate that:
> they have maintained the land in a neat and orderly condition
> the road (right of way) has been occupied for 15 years or more
> and there is no evidence of opposition to the occupation of the right of way.

Other Information
Who is responsible for fencing along roads (rights of way) and drainage reserves?
Council is not responsible for construction and maintenance of fencing on any land defined as a road under the Local Government Act 1989. Fencing is the responsibility of the adjoining property owner.

Who is responsible for the maintenance of rights of way?
Council is not obliged to carry out any surface or drainage works on an unconstructed road (right of way). Generally, responsibility for maintaining a road (right of way) rests with abutting landowners.
Council relies on the goodwill and interests of its residents to keep a road (right of way) in good condition in order to preserve the amenity and security of the area immediately adjacent to their property.

Who is responsible for removing obstructions and encroachments in roads (rights of way) and reserves?
Generally, it is an offence to illegally obstruct and cause encroachments on a road (right of way) and reserves. Where a road (right of way) is obstructed by substantial hard rubbish or other materials or illegally occupied and fenced you should contact Council’s Citizens Services on 9243 8888.

For further information please contact the Property Services Department on 9243 8891.

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The information contained in the brochure should be used as a general guide only. Moonee Valley City Council reserves the right to alter its policy and procedures regarding the management of road discontinuances and sale of land and accepts no liability for any error or omission contained in this brochure.
Moonee Valley City Council can facilitate the discontinuance of roads (rights of way) and removal of drainage reservations in certain circumstances and provide the opportunity for abutting property owners to purchase the land.

This brochure explains the status and nature of roads (rights of way) and drainage reserves and sets out the process to discontinue roads and removal of drainage reservations, in the event that the road is no longer reasonably required for public use or the reserve land is not required for drainage reservation purposes.

What are roads (rights of way) and drainage reserves?
Roads (rights of way) and drainage reserves were routinely set out on early plans of subdivision to service the needs of residents. Historically, roads (rights of way) provided access for 'night soil carts' to collect pans prior to modern sewerage systems and rights of carriageway for residents to access the rear or side of their property. Many roads (rights of way) are constructed in bluestone or other material, but equally, many are unmade and unkempt. Drainage reserves were created to enable adequate drainage flow from properties in the subdivision. Generally, a drainage reserve will be constructed, but many remain unconstructed and are grassed or overgrown with vegetation.

Who owns the road (right of way) and drainage reserve?
Generally, roads (rights of way) and drainage reserves remain registered and in the ownership of the original subdivider. It was common for subdivided allotments to be sold to individual owners leaving only the road (right of way) and drainage reserve remaining in the original title. Contrary to popular belief, Council is rarely the owner of this land.

When can Council discontinue a road (right of way) and remove a drainage reservation?
Council has the authority under the Local Government Act 1989 to discontinue a road (right of way) where Council forms the opinion that the road is no longer reasonably required for public use. Council does not encourage the discontinuance of roads (rights of way) that are constructed or contain open drains. However, such roads may be considered for discontinuance if all abutting owners agree to meet the cost of removing the existing paving and/or installing an underground drainage system.

Once the road (right of way) has been discontinued, the land vests in Council ownership. Council then has legal entitlement to sell the land to abutting property owners or retain the land for municipal purposes.

Council can undertake procedures for the removal of the drainage reserve status under section 24A of the Subdivision Act 1988 and where appropriate, subdivide the land for sale to abutting owners where Council is of the view that the land is no longer required for reservation and is surplus to Council requirements.

What is the land abutting my property?
To establish the status of the land and determine whether it is a road (right of way) or drainage reserve you can view your Title, or search the original Certificate of Title and plan of subdivision. This information can be obtained by undertaking a title search to ascertain ownership details and whether the land is a road or drainage reserve. This can be done through a solicitor, title searcher or at the Land Titles Office.

How do I make application? What information needs to be supplied to Council?
Requests for discontinuance of a road (right of way) and/or removal of a drainage reservation require a written application. To assist us, it is recommended that you provide the following information:

> Description of the subject road (right of way) and reserve, title particulars, plan and photos
> Evidence of support from affected property owners. (i.e. joint letter, petition, completed survey/questionnaire).

Council has prepared a Road Discontinuance Information Kit to assist applicants. The kit can be obtained by contacting the Property Services Department on 9243 8891 or from Council’s website www.mvcc.vic.gov.au.

What is involved in discontinuing a road (right of way)?
When a written request is received, Council officers will assess the information provided and if appropriate, carry out further investigations to ascertain the suitability of the road discontinuance and sale. Preliminary investigations and subsequent statutory process can take up to 12 months to complete.

How much will it cost?1
Council has an obligation to dispose of public land in the best interests of the community and achieve the best outcome, both financial and non financial for the Council and the community. Therefore, Council will only sell land based on current market value in accordance with Council policy and the general principles of the Local Government Best Practice Guideline for the Sale/Exchange of Land 2008.

Council must obtain a current market valuation from a qualified Valuer for any land it proposes to sell and this valuation must be obtained no longer than 6 months prior to the sale of land. As a guide, the market value for land contained in roads (rights of way) and drainage reserves in Moonee Valley could range between $250 - $500m² and will depend upon real estate values at the time, location, any encumbrances over the land and overall benefit to the purchaser’s property. Additional costs will include Council’s legal, administration and survey costs of up to $5000 which may be distributed amongst the purchasers.

Each purchaser will also be responsible for individual land transfer costs, or any other associated costs such as consolidation of titles and any creation of easements required.

1 Based on best estimate only