

Policy ID Number:[ ]

# Road and Reserves Discontinuance and Sale Policy

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<b>Position Title of Responsible Business Unit Manager/or other:</b>	Director Assets and Facilities	

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- 1. TITLE** Road and Reserves Discontinuance and Sale
- 2. PURPOSE** To provide guidance when Council considers the discontinuance and sale of Roads and Reserves.
- 3. OBJECTIVE** To ensure that Council has a consistent and equitable approach to dealing with the discontinuance and sale of redundant Roads and Reserves.

**4. DEFINITIONS AND ABBREVIATIONS**

<b>Term</b>	<b>Meaning</b>
Road/s	the same meaning as is set out in section 3(1) of the <i>Local Government Act 1989</i> . It includes, but is not limited to, a right of way, a street or a footpath.
Reserve/s	a narrow parcel of land such as a drainage reserve set aside as a reserve on a plan of subdivision but not set aside for recreational purposes.

**5 BACKGROUND**

Many of Glen Eira’s Roads and Reserves were set out in early plans of subdivision. Some are no longer needed for the purpose set out in those plans and/or a Council purpose (i.e. the Road or Reserve is redundant).

Almost all redundant Roads in Glen Eira are rights of way that historically provided secondary access to properties. Most are unmade and some have been fenced into adjacent properties.

Almost all redundant Reserves are drainage reserves originally intended to accommodate Council drains, sewerage and drainage authority assets or overland flow of stormwater. Less common are general Reserves the original subdivider created as a buffer between theirs and a neighbouring subdivision. Like Roads, some Reserves have been fenced in.

To amend the status of the land under a Road or Reserve, Council must formally discontinue the Road or Reserve. Council may discontinue all or part of a Road or Reserve.

Discontinuing a section of Road or Reserve converts the subject land to a lot on title with or without encumbrances. If Council does not already own the land, the process also transfers ownership to Council. When a Road or Reserve is discontinued, Council may then consider whether to sell the land or retain the land in its ownership.

Council usually considers discontinuing a section of Road or Reserve in response to a request from an owner of an adjacent property wanting to acquire the land. It is often more cost effective to discontinue a whole section of redundant Road or Reserve rather than the section of immediate interest only. In these circumstances Council will first gauge the level of interest of

other land owners to assess the financial viability of discontinuing the section of Road or Reserve before deciding whether to proceed.

Sometimes, rather than seeking to acquire the land from Council, an owner may attempt to claim the land by adverse possession. This process involves an owner applying to Land Victoria to transfer the land into their ownership on the basis of exclusive long term occupation. Land Victoria will usually notify Council of such an application and Council will need to decide whether to contest the application.

## **6 POLICY**

### **6.1 General**

6.1.1 In considering whether a section of a Road or Reserve is redundant, Council will consider whether the land is still required for a public purpose (now or in the future) which includes:

- public vehicular and/or pedestrian access;
- public open space; or
- public works or flood mitigation.

6.1.2 Having considered whether a section of a Road or Reserve is redundant, Council may:

- take no action to change the status of the land;
- discontinue the Road or Reserve and retain in Council's ownership;
- discontinue the Road or Reserve and sell the land; or
- where the land is subject to an adverse possession claim, decide whether to contest such a claim.

6.1.3 Where part of the Road or Reserve is to be discontinued and Council or another authority needs to retain an interest in the land, Council may require that the land be encumbered with an appropriate easement in favour of the relevant authority. If the land is to be sold, Council may require the purchaser to meet the cost of relocating the assets, if they require relocation

Where Council decides not to discontinue a section of Road or Reserve or does discontinue but does not on-sell, it may require the land to be kept clear of obstruction including buildings, fences and other obstructions.

### **6.2 Financials**

6.2.1 Where a property owner has requested that Council discontinue and sell a section of a Road or Reserve, Council may not agree to do so if Council is unlikely to recover its costs.

6.2.2 Where Council decides to sell the land, it will do so at the current market value as assessed by a qualified valuer, except:

- where the person seeking to acquire the land can demonstrate there has been

continuous and exclusive occupation of the subject land for at least the previous 12 years, in which case Council may sell the land at 50% of the current market value; or

- if the benefits accruing to the community from the sale justify a lower sale price<sup>1</sup>.

6.2.3 For the market valuation to be current, the valuation must be less than six months old when the purchaser agrees in principle to acquire the land<sup>2</sup>.

6.2.4 The purchaser of the land must pay all of the conveyancing costs associated with the transfer of the land and the relocation of fences and authorities' assets.

6.2.5 The full purchase price must be paid to Council at the time of settlement except in exceptional circumstances where the Director Assets and Facilities may approve term payments.

6.2.6 Term payments can be for up to three years. Council may also charge administrative costs and interest on such payments. Title to the land will not pass to the purchaser(s) until the full purchase price plus any costs and/or interest are paid.

### 6.3 Land Allocation

6.3.1 Where Council proposes to discontinue and sell a Road or Reserve, it will first offer parcels of the land to those owners of properties that can demonstrate continuous and exclusive occupation of those parcels for at least the last 12 years.

6.3.2 Where 6.3.1 does not apply, Council will first offer to divide the land and sell parcels to the owners of abutting properties (making allowance for the alignment of any authority's assets).<sup>3</sup>

6.3.3 If an owner of an abutting property either does not agree to purchase or does not respond to Council's invitation to purchase within 60 days, Council may then offer the land to another abutting owner.

6.3.4 Where it is not feasible to divide the land in such a way that it can be equitably shared<sup>4</sup>, and more than one owner wants to purchase the land, Council may invite those owners to make an offer and will accept the highest offer submitted. Council

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<sup>1</sup> This would only be in exceptional circumstances e.g. where Council is likely to incur significant ongoing maintenance costs for the redundant land if it retained the land.

<sup>2</sup> This is to allow for the statutory process for Council to consider and agree to discontinue a Road or Reserve which will typically occur months after an in principle agreement is reached.

<sup>3</sup> E.g. Council is considering discontinuing a 20m long by 3m wide right of way. There are no authorities' assets on the land and there are two properties abutting, on each side. Council offers each owner of the abutting properties a 1.5 metres wide by 20 metres long parcel.

<sup>4</sup> E.g. A right of way has a property on each side and a Council drain along the middle. To avoid placing a title boundary (and therefore a fence) over the drain, the whole width needs to be sold to only one of the owners of the abutting property. If both owners want the full width, Council would sell to the highest bidder (at no less than the original offer price).

must not accept an offer less than that would otherwise be determined in accordance with 6.2.2.

6.3.5 Council will not sell sections of discontinued Road or Reserves to parties other than the owners of abutting properties unless it is in the public interest to do so<sup>5</sup>.

## **7 HUMAN RIGHTS CHARTER COMPATIBILITY**

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

## **8 ASSOCIATED DOCUMENTS**

Use of Rights of Way Policy

## **9 REFERENCES/RESOURCES**

*Charter of Human Rights and Responsibilities Act 2006*  
*Local Government Act 1989*  
*Planning and Environment Act 1987*  
*Subdivision Act 1988*

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<sup>5</sup> Due to the narrow width of most redundant Roads and Reserve, the land is usually best consolidated into abutting land. On the very rare occasions a section of redundant Road or Reserve is large enough to develop separately, Council may obtain a higher price for the land if sold on the open market.