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ROADS AND RESERVES DISCONTINUANCE AND SALE POLICY

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1. TITLE

Roads and Reserves Discontinuance and Sale Policy

2. OBJECTIVES

This policy provides direction as to the circumstances and considerations as to whether Roads and Reserves should be retained by Council or can be Discontinued and/or sold, which Council determines are no longer reasonably required for Public Purpose.

To ensure:

- a consistent and equitable approach to dealing with the Discontinuance and sale of Roads and Reserves which are no longer reasonably required for Public Purpose;
- all Roads and Reserves that are reasonably required for a Public Purpose and/or access will be retained and remain open and available for the public; and
- Roads and Reserves no longer required for a Public Purpose are disposed of in accordance with this policy.

The achievement of these objectives will:

- reduce Council's long term financial and legal liabilities for surplus Roads and Reserves (e.g. maintenance, cleaning and public liability);
- improve local amenity for residents (e.g. increasing security of property by the elimination of access points);
- formalise ownership and occupation of Roads and Reserves; and
- maximise revenue from the transfer or management of surplus Roads and Reserves.

3. DEFINITIONS

Term	Meaning
Applicant	Refers to an individual or entity that is applying to discontinue and purchase land from the discontinued Road or Reserve
Council	Glen Eira City Council
Discontinue a Road	The exercise of power under clause 3 of schedule 10 of the <i>Local Government Act 1989</i> in relation to a Road potentially allowing for the land to be sold or used for other purposes
Discontinue a Reserve	The removal of reserve status in relation to a Reserve under section 24A of the <i>Subdivision Act 1988</i> , potentially allowing for the land to be sold or used for other purposes
Government Road	Crown land which is reserved as a 'government road' and is the property of the Crown
Road	Has the same meaning as set out in section 3(1) of the <i>Local Government Act 1989</i> : <p><u>"road</u> includes—</p> <ul style="list-style-type: none"> (a) a street; and (b) a right of way; and (c) any land reserved or proclaimed as a street or <u>road</u> under the <u>Crown Land (Reserves) Act 1978</u> or the <u>Land Act 1958</u> ; and (ca) a public <u>road</u> under the <u>Road Management Act 2004</u> ; and (d) a passage; and (e) a cul de sac; and (f) a by-pass; and (g) a bridge or ford; and (h) a footpath, bicycle path or nature strip; and <p>any culvert or kerbing or other land or works forming part of the <u>road</u>"</p>
Reserve	Has the same meaning as section 3(1) of the <i>Subdivision Act 1988</i> : <p><u>"reserve means <u>land</u> set aside as public open space, or for the use of a <u>public authority</u> or the <u>Council</u>;"</u></p> <p>Parcels of land set aside as a grass strip, park, recreation area, drainage reserve or other similar land which are not available for private development and for which Council has the power to deal with under section 24A of the <i>Subdivision Act 1988</i>, but does not include land set aside for recreational or open space, which is:</p> <ul style="list-style-type: none"> (a) registered in Council's name; or (b) under Council's care and management, and therefore capable of being vested in Council's ownership under section 24A of the <i>Subdivision Act 1988</i>
Public Purpose	Includes, but is not limited to, the following: <ul style="list-style-type: none"> • a strategic purpose; • ongoing public vehicular and/or pedestrian access which is inconsistent with the sale of a Road to an adjoining owner; • public open space; • historical significance or provides improved character to the area (including, for example, historical bluestone laneways); • public works or flood mitigation; • determined by Council to be of ecological value; • general public use (now or is likely to be in the future, as determined by Council)
Purchaser	Refers to an individual or entity that Council has agreed to sell the discontinued Road or Reserve to
Subject Land	The Road, Reserve or other land that is the subject to a proposed discontinuance or sale

4. POLICY

General

The following general principles will apply in relation to the Discontinuance and sale of Roads and Reserves:

- 4.1 Council may instigate the Discontinuance of a Road or Reserve or do so upon request by an Applicant. Council will make preliminary investigations (and may require the Applicant to bear Council's costs to obtain legal advice). Following such investigation, Council may determine in its absolute discretion whether or not to proceed with the proposal.
- 4.2 Where a Road or Reserve abuts properties other than those owned by the Applicant, Council may require the Applicant to seek the consent of all other adjoining land owners to the proposal, and provide Council with copies of any responses received, prior to deciding whether to proceed with the proposal.
- 4.3 Council will not proceed with a proposal to Discontinue a Road or Reserve if Council determines the land is still required for a Public Purpose (now or in the future).
- 4.4 Where Council decides a section of the Road or Reserve is no longer reasonably required for a Public Purpose, Council may:
 - take no action; or
 - Discontinue a Road or Reserve

If Council decides to Discontinue a Road or Reserve, Council may:

- retain title to the Subject Land; and/or
- sell the Subject Land to a Purchaser

Note: If Council decides to sell the Subject Land, except where section 116 of the *Local Government Act 2020* applies, Council must comply with the requirements of section 114 of the *Local Government Act 2020*. This policy is in addition to and does not derogate from the requirements of section 114.

- 4.5 Council may elect not to proceed with a proposal to Discontinue a Road or Reserve where Council determines in its absolute discretion that the proposal:
 - is of no value to Council;
 - would result in Council incurring significant legal costs (if Council waives the requirement for the Applicant to reimburse all Council's costs in connection with the proposal); or
 - is, in Council opinion, likely to receive significant opposition from adjoining land owners or the general public.
- 4.6 Where part of the Road or Reserve is to be Discontinued and Council or another authority need to retain an interest in the Subject Land, Council may require that an express easement in favour of the relevant authority be recorded on the title to the Subject Land, prior to any transfer to the Purchaser.

- 4.7 If the Subject Land is to be sold, Council may require the Purchaser to meet the cost of relocating any assets or infrastructure within the Subject Land which are owned by Council or a statutory authority, if they require relocation, as a condition of the sale. Equally, there could be a need for the provision of new assets, modifications, upgrades or the removal of an asset within the Subject Land and the Purchaser may be required to meet these costs as a condition of the sale.
- 4.8 Where an adjoining land owner is occupying part of a Road or Reserve without Council's consent, including by way of constructed encroachments, Council may, having regard to the content of any Council policy with respect to the management of the occupation, either:
- consider a proposal to discontinue the Road or Reserve and transfer it to the adjoining owner;
 - require that the adjoining land owner vacates the land and remove any encroachments; or
 - grant a licence to the adjoining land owner to authorise its occupation of the land and permit any encroachments, on terms which are acceptable to Council.

Council is not under any obligation to consider the Discontinuance and sale, or licence, or any Road or Reserve which is being occupied without Council's consent.

- 4.9 Council will generally sell sections of Discontinued Roads or Reserves to the Applicant and/or adjoining land owners unless, due to the size or location of the Subject Land, Council determines it is in the public interest to sell the Subject Land on the open market.
- 4.10 Council will consult with adjoining land owners on an application. Where an adjoining land owner objects to the application, Council will consider the merits of the objection and determine at its discretion to proceed with the application or to retain the Subject Land in its current form on the basis that it is still genuinely required for its original purpose.
- 4.11 Unless exceptional circumstances apply Council will take title to all unsold parcels of land from the Discontinued Road.

Note: The Discontinuance of a Reserve involves registration of a plan of subdivision at Land Use Victoria, or its successor in law. Upon registration, Council becomes the registered proprietor of the former Reserve.

- 4.12 The owner(s) of any property in occupation of the Subject Land may be directed to remove all buildings and obstructions from the Subject Land immediately in accordance with Council's statutory powers and any Council policy with respect to encroachments constructed by private owners on Council land.

Adverse Possession

- 4.13 An owner may attempt to claim a Road or Reserve by adverse possession when the land is not owned by Council or vested in Council at law. Council reserves the right to contest such a claim.
- 4.14 A Road will be vested in Council at law (even if it is not owned by Council), if it is a 'road' for the purpose of the *Road Management Act 2004*.

Government Road

- 4.15 If Council discontinues a Government Road, the land will vest in the Crown (not Council). Council has no power to transfer or retain such land and any individual or entity wanting to purchase the land would need to reach an agreement with the Crown to take a transfer of the land. As Council will not be able to sell the land for market value, Council will only proceed with the discontinuance of a Government Road where Council determines there is community benefit associated with the proposal.
- 4.16 As an alternative, Council may consider making a decision that a Government Road is an 'unused road' and provide its consent to the closure of the Government Road by the Department of Energy, Environment and Climate Action (or its successors in law) under the Land Act 1958.

Financial Considerations

- 4.17 All applications for the Discontinuance of a Road will be accompanied by a non-refundable application fee to be established in the fees and charges section of the annual Budget. The application fee will be deducted from the sale price and costs payable for the proposal, if the matter proceeds to a sale of the Subject Land.
- 4.18 Where Council decides to sell a Discontinued Road or Reserve, it will do so at the current market value as assessed by an independent 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 15 years, in which case Council may sell the land at 50% of the current market value (this will only apply in circumstances where the Road or Reserve is not registered in Council's name or, in the case of Roads, vested in Council at law under the *Road Management Act 2004*); or
 - if Council determines in its absolute discretion the benefits accruing to the community from the sale justify a lower sale price. This would only be in exceptional circumstances and may include circumstances where:
 - ongoing maintenance costs are substantial
 - there would be improvements to community safety by consolidating the land into private ownership
 - the sale is to the State or another public body to facilitate a public benefit; or
 - the sale will facilitate a development which Council considers to be in the public interest.

4.19 Council will not accept third-party valuations.

4.20 The Purchaser/s of the Subject Land must pay all Council's out of pocket costs associated with the Discontinuance, sale and transfer of the Subject Land, which may include valuation, survey, public notice and legal costs, as well as the relocation or replacement of fences and authorities' assets if required. Council will require the Applicant to enter into a cost's agreement with Council, prior to determining whether to proceed with the proposal.

4.21 The full purchase price for the Subject Land must be paid to Council at the time of settlement. Council will not transfer the Subject Land to the Purchaser until the full purchase price plus any outstanding costs are paid.

Subject Land Allocation

4.22 Where Council proposes to Discontinue and sell a Road or Reserve, it will first offer parcels of the land to the adjoining land owners who can demonstrate continuous and exclusive occupation of those parcels for at least 15 years.

4.23 Where the above circumstances do not apply, Council will offer to divide the land and sell parcels to the adjoining land owners on an equal share basis, subject to the requirements and alignment of any authority's infrastructure and assets.

4.24 In determining whether to agree to a proposal to Discontinue and sell a Road or Reserve to an adjoining land owner, Council may decide not to proceed with a proposal where it would result in a landlocked parcel of land.

4.25 Council may elect to Discontinue a Road or Reserve and vest the land in Council's ownership.

4.26 Council may Discontinue a Road or Reserve and subdivide the land in order to transfer part of the land to adjoining land owners and retain the balance of the land to transfer at a later date, upon reaching agreement with the adjoining land owners.

4.27 Where possible, Council will first offer to divide the land equally and offer to sell equal portions to each of the adjoining owners. Where it is not feasible to divide the land equally (particularly where assets dissect the land or the adjoining property boundaries are of different lengths), Council should propose to divide the land according to the adjoining property boundaries.

4.28 Where Council is unable to divide the land in accordance with the adjoining property boundaries, and more than one owner wants to purchase the land, Council may invite those owners to make separate offers and may accept the highest offer submitted. Council must not accept an offer less than market value.

- 4.29 In determining whether to proceed with a road discontinuance proposal, Council will consider whether the proposal will affect the access of adjoining properties to the public road network. Council may distinguish between proposals which would extinguish:
- the *only* point of access of an adjoining property, in which case Council should not proceed unless compelling circumstances exist (eg. where the Applicant owns or has purchased that adjoining property); and
 - a *secondary* point of access of an adjoining property, in which case Council may consider proceeding with a proposal on the basis that those properties will retain their primary access to the road network (in this case, Council may require that the Applicant obtain the consent of those adjoining land owners to the proposal).
- 4.30 Where no agreement can be reached between the parties 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.
- 4.31 Except where the Purchaser's property is subject to an Owners Corporation, Purchasers will be required to consolidate the land purchased from Council with their abutting land parcel within six months of settlement. Where consolidation is required, Purchasers must lodge the necessary dealings with Land Use Victoria and provide proof of registration to Council within three months of settlement. Should a Purchaser's property be subject to an Owners Corporation, the written consent of the Owners Corporation to purchase the land from the Discontinuance must be provided to Council's satisfaction.

5. LEGISLATIVE COMPLIANCE

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

6. ASSOCIATED COUNCIL DOCUMENTS

Glen Eira Property Strategy 2021
Glen Eira Strategic Property Plan 2025 – 2030
Glen Eira Financial Plan 2025 - 2035
Glen Eira Sale of Land and Buildings Policy 2023
Glen Eira City Council Community Local Law 2019

7. EXTERNAL REFERENCES/RESOURCES

Charter of Human Rights and Responsibilities Act 2006
Local Government Act 1989
Local Government Act 2020
Planning and Environment Act 1987
Road Management Act 2004
Road Management (General) Regulations 2016
Subdivision Act 1988