



Yarra City Council

Draft Management Policy in Relation to Laneways, Passageways and Rights of Way in Yarra

2019

Adopted by Council:

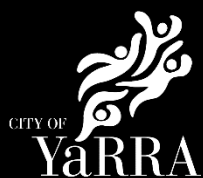


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1. Introduction

There is an extensive network of streets, laneways, passageways and Rights of Way (ROWs) in Yarra, many of which have been in place since the early establishment of Yarra's suburbs.

Yarra's streets and the majority of its laneways, passageways and ROWs are 'roads' as per the meaning of a 'road' set out in legislation (the relevant legislation is referred to in this Policy where it applies).

Non-State Government roads in Yarra's municipal district ordinarily vest in Council ownership free of all mortgages, charges, leases and sub-leases. In many cases this will include historic 'public highways' (as per the definition(s) set out in legislation) and 'roads' on title that, over time, have fallen into disuse and have subsequently been incorporated into private land.

The ownership, management and access requirements of some laneways, passageways and ROWs can be less clear in comparison to Yarra's streets and in some cases is contested.

There are many laneways, passageways and ROWs in Yarra that are considered to be 'reasonably required for general public use' and as per legislation are 'public roads'.

However, there are some laneways, passageways and ROWs in Yarra that currently do not serve a wider community need and different management approaches need to be considered, noting that the public has a right to access 'roads' in Yarra, subject to any Council (or other relevant authority) permit or restriction that states otherwise.

In some cases, there are laneways, passageways or ROWs that are no longer required to be a 'road' and, subject to the requirements of legislation and Council policy, could become land with an alternative use and/or ownership.

For these reasons, a standalone draft Management Policy has been developed for laneways, passageways and ROWs (referred to hereafter just as laneways and passageways) to help guide decision making in line with legislative requirements and to ensure that community need is prioritised in the management of laneways and passageways.

To achieve this, this Policy sets out guidelines to identify which laneways and passageways are 'public roads' and therefore must be included on Council's Register of Public Roads (referred to hereafter as the Register).

The Policy sets out processes for the inclusion, removal and retention of 'public roads' on the Register and the management of 'public roads' in line with legislation.

The Policy also sets out the processes for the management of laneways and passageways in Yarra that are not 'public roads' (referred to hereafter as 'non-public roads') and provides guidelines on the management and ownership options for laneways and passageways that are no longer required to be 'roads'.

2. Purpose

To provide the framework for consistent decision making regarding the management of laneways and passageways in Yarra.

3. Objectives

- 3.1. To establish a policy position in relation to Council's management functions for laneways and passageways in Yarra.
- 3.2. To guide decision making in line with the requirements of the Road Management Act (2004) and the Local Government Act (1989).
- 3.3. To ensure safe access and movement on laneways and passageways that are 'reasonably required for general public use'.
- 3.4. To ensure the integrity and function of Council infrastructure assets typically installed in laneways and passageways such as the stormwater drainage system.
- 3.5. To ensure that community need is prioritised in the management of laneways and passageways.
- 3.6. To set out the criteria for deciding which laneways and passageways in Yarra are 'public roads' to be included on the Register.
- 3.7. To set out the process that Council will undertake following a community enquiry on the management of a laneway or passageway in Yarra.
- 3.8. To set out Council's position on the future management and ownership of laneways and passageways that currently do not meet the criteria to be a 'public road'.

4. Abbreviations and Definitions

- 4.1. LG Act – Local Government Act (1989)
- 4.2. RM Act – Road Management Act (2004)
- 4.3. RMP – City of Yarra Road Management Plan (2017)
- 4.4. Register – City of Yarra Register of Public Roads
- 4.5. Laneway: In the context of this Policy, a laneway is a narrow 'street' that typically provides a shared access carriageway that facilitates the movement of people and vehicles of a suitable size to access the laneway, subject to any traffic management restrictions. Laneways in Yarra have varying access functions which may include providing the only access to a properties or a secondary (usually side or rear) access to properties. Some laneways in Yarra provide direct connections or form part of a link between two streets, while other laneways only provide access to a limited number of properties.
- 4.6. Passageway: In the context of the Policy, a passageway is a narrow access provided between two or more properties that typically can only facilitate movements by pedestrians and non-car transport. Some passageways in Yarra provide direct connections or form part of a link between two streets, while other passageways only provide access to a limited number of properties.
- 4.7. Road: This policy refers to a 'road' within the meaning of section 3 of the RM Act and section 3 of the LG Act.

- 4.8. Public Road: This policy refers to a 'public road' within the meaning of section 17 of the RM Act.
- 4.9. Non-Public Road: In the context of this Policy, the term 'non-public road' is used to refer to 'roads' (including laneways and passageways) in Yarra that Council has determined not to be a 'public road'.
- 4.10. Public Highway: This policy refers to a 'public highway' within the meaning of section 3 of the RM Act and section 3 of the LG Act.
- 4.11. Right of Passage: This policy refers to 'right of passage' within the context of the rights of road users to access roads within the meaning of section 8 of the RM Act.
- 4.12. Discontinuance: In the context of this Policy, discontinuance relates to the act and formal processes associated with the discontinuance of a road as per section 12 of the RM Act and Schedule 10 of the LG Act.
- 4.13. Primary Access: In the context of this Policy, primary access for a property refers to the local street(s) or main road(s), in cases where the property has access from both a street/main road and a laneway or passageway. For properties accessed only from a laneway, the laneway is the primary access.
- 4.14. Secondary Access: In the context of this Policy, secondary access for a property refers to the laneway or passageway, where the property also has access from a street or main road.
- 4.15. Coordinating Road Authority: the road authority which has coordination functions in accordance with section 36 of the RM Act.
- 4.16. Responsible Road Authority: the road authority which has operational functions in accordance with section 37 of the RM Act.
- 4.17. Gazetted: has been published by Council in an official gazette (a publication that has been authorised to publish public or legal notices).

5. Identifying 'road' and 'public road' status for laneways and passageways in Yarra

- 5.1. The City of Yarra is both the coordinating road authority and responsible road authority for laneways and passageways that are municipal 'roads' and municipal 'public roads' in Yarra.
- 5.2. Laneways and passageways in Yarra fall under at least one of the following legislative classifications:
 - Laneways or passageways that are 'public roads' under the RM Act;
 - Laneways or passageways that are 'roads' but not 'public roads' under the RM Act (referred to in this Policy as 'non-public roads', as laneways or passageways that are 'public roads' also fall under the definition of a 'road' under both the RM Act and/or LG Act); or
 - Laneways or passageways that are not 'roads' under the RM Act or LG Act, simply meaning that the laneway or passageway would be a parcel(s) of land.
- 5.3. In addition to the above classifications, there will also be laneways and passageways in Yarra that are no longer required to be 'roads', but would retain the legal status of a 'road' until the 'road' is discontinued.

- 5.4. Council has different responsibilities and risk exposure in relation to laneways and passageways that are 'public roads', 'non-public roads' and 'not roads at all', hence there is a need for Council to adequately identify which laneways and passageways fall into each category.
- 5.5. The responsibilities and risk exposure for these different categories of 'road' (or 'non-road') is summarised in Appendix A of this Policy.
- 5.6. A laneway or passageway can only be a 'public road' if it is a 'road'.
- 5.7. Laneways and passageways in Yarra are 'roads' either through:
 - Declaration of road status under an Act (such as RM Act, LG Act, Land Act (1988), Planning and Environment Act (1987) or any other relevant legislation); or
 - By being public highways under common law.
- 5.8. It is noted that the majority of laneways and passageways in Yarra are 'public highways' under common law.
- 5.9. In many cases this will include historic 'public highways' and 'roads' on title that, over time, have fallen into disuse and have subsequently been incorporated into private land, noting that a 'road' retains the status of a 'road' until it is discontinued.
- 5.10. In cases where the identification of the 'road' status of a laneway or passageway is not clear, or is contested, Council officers will undertake further investigation using the process set out in Figure 1 (page 6) as a general guideline.
- 5.11. For a laneway or passageway to be a 'public road' and therefore required to be included on the Register, it must either meet certain statutory definitions or Council may make a decision in writing that the road is 'reasonably required for general public use'.
- 5.12. The RM Act does not define the phrase 'reasonably required for general public use'. As such it is up to Council (as the Road Authority) to determine, guided by the principles that:
 - The road should be available for use by the community as a whole; and
 - There is an identified reasonable or legitimate need, such as the road is regularly used by the public or it serves a public need.
- 5.13. To ensure fair and consistent decision making, 'public roads' will be identified based on the criteria and factors to be considered by Council set out in Figure 2 (page 7).
- 5.14. The criteria and factors for consideration by Council is justified on the basis of:
 - The laneway or passageway is currently used by the public and as such there is a public need for the use of the laneway or passageway.
 - The laneway or passageway has an identified movement or access function and contributes to local or regional connectivity for some or all transport modes.
 - The public stormwater drainage system plays an important function in managing storm water. In some cases, disruption to the public stormwater drainage system may result in damaged or shorter life of assets, or may impact on neighbouring properties. In such cases Council may decide that it is in the public interest that the laneway or passageway is a 'public road'.

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- The laneway or passageway contributes to public safety or any other legitimate community outcome or need.
- 5.15. Conversely, laneways and passageways that do not meet the criteria will not be subject to a decision that they are 'reasonably required for public use' and so will not be 'public roads'. This is likely to include:
- Laneways and passageways that only provide access to adjacent properties and has no through connection (unless it has stormwater drainage function or identified legitimate community need); and
 - Disused laneways and passageways.
- 5.16. While these laneways and passageways will not be 'public roads', they will continue to be 'roads' until the 'road' is discontinued. Until discontinuance, the rights of road users under the RM Act to pass along a road will still apply.

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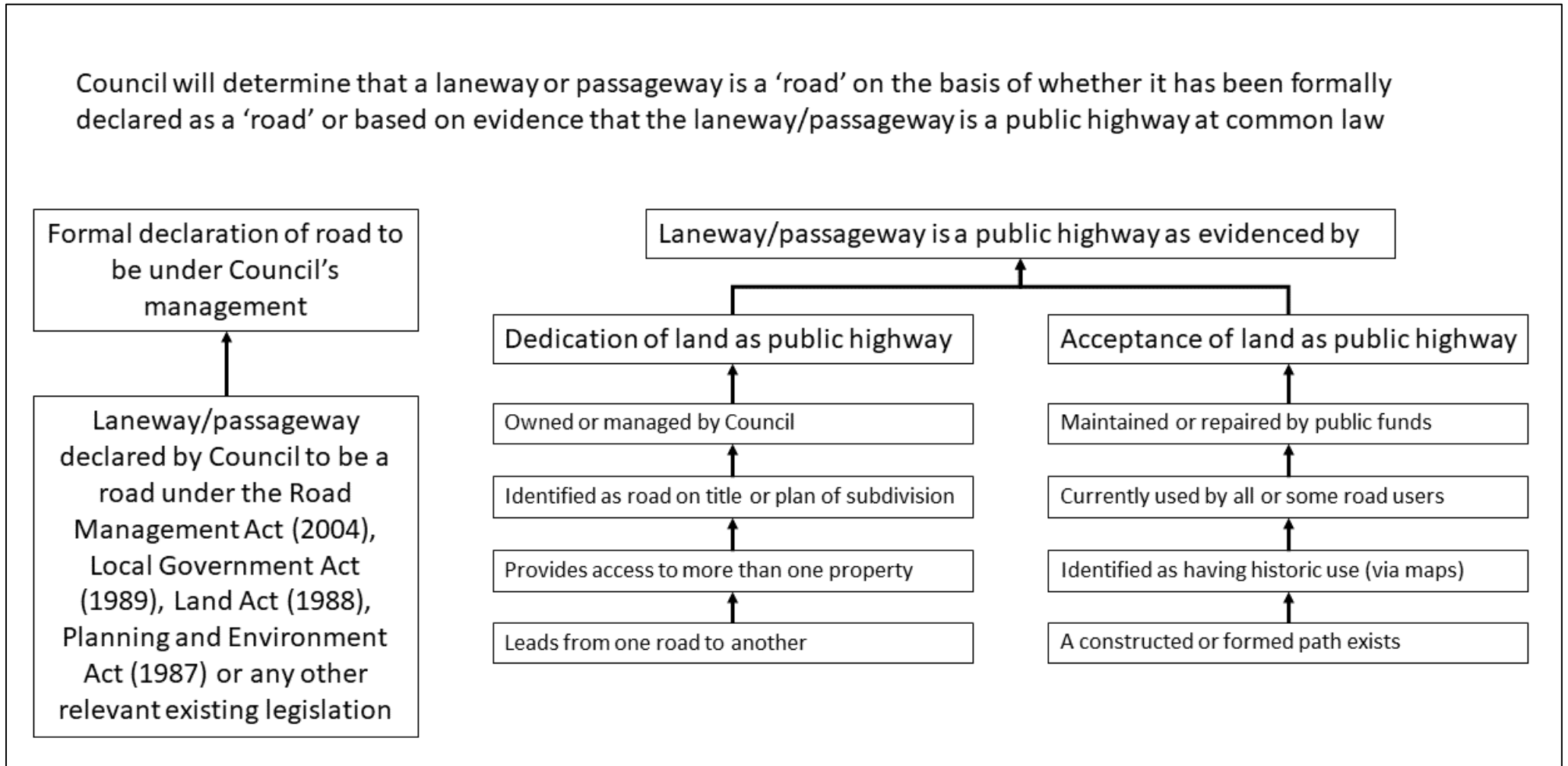


Figure 1 - Guideline to determine whether laneway or passageway is a 'road'

Council will determine that a laneway or passageway is a 'public road' based on an assessment of the following criteria, and factors to be considered, on whether the laneway or passageway is 'reasonably required for general public use'.

In all cases the laneway or passageway must firstly be a 'road' for the purposes of the Road Management Act (2004) – see Figure 1
Any new laneways or passageways created through subdivision will only be adopted as Public Roads if constructed to Council standards

Criteria and factors to be considered

- Laneway/passageway is presently used by public and has not fallen into disuse
- Laneway/passageway directly connects to, or forms part of a link, between two roads
- Laneway/passageway provides the primary access point to a residence or business
- Laneway/passageway provides access to or is adjacent to public open space, sporting facilities, community facilities or a car park
- Laneway/passageway forms part of Council's storm water drainage system
- Laneway/passageway is constructed to Council standards
- Laneway/passageway is required for emergency fire access
- Laneway/passageway provides a legitimate other community need as determined by Council in its declaration of Public Road status (i.e. bluestone lane with heritage value)

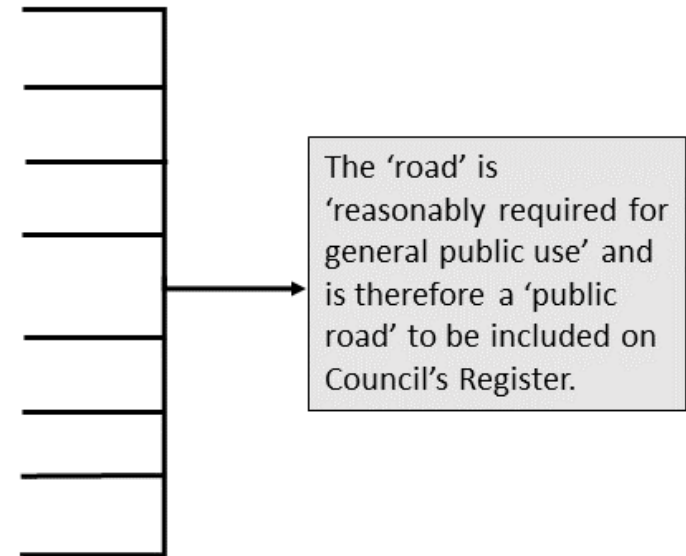


Figure 2 - Criteria and factors to be considered to determine 'public roads'

6. Management of laneways and passageways that are 'public roads'

- 6.1. Under the RM Act Council is required to have a Register of Public Roads (Register).
- 6.2. Council's current Register was first gazetted in 2004 and has been updated as required.
- 6.3. For a laneway or passageway to be a 'public road' under the RM Act, Council (or a delegate) is required at a meeting of Council to make a decision and record in writing that the laneway and passageway is 'reasonably required for general public use'.
- 6.4. This decision and record is a formal acknowledgement by Council that it has the responsibility for the ongoing inspection, maintenance, repair and risk associated with the laneway or passageway being a 'public road'.
- 6.5. Once Council makes this decision, Council will be required to add the laneway or passageway to the Register.
- 6.6. Similarly, if a 'public road' is no longer 'reasonably required for general public use', Council (or a delegate) is required at a meeting of Council to make a decision and record in writing that the laneway and passageway is not 'reasonably required for general public use'.
- 6.7. Once Council makes this decision, Council can remove the laneway or passageway from the Register.
- 6.8. The inclusion or retention of laneways and passageways as 'public roads' on the register will be based on the process and assessment set out in Figure 3.
- 6.9. Once a laneway and passageway becomes a 'public road', Council is under a statutory duty to inspect, maintain and repair the laneway or passageway.
- 6.10. Laneways and passageways that are 'public roads' will be managed as per the process set out in Figure 4 (page 9).
- 6.11. Laneways and passageways that are 'public roads' will be inspected, maintained and repaired as per the applicable standards as set out in Council's Road Management Plan (RMP).
- 6.12. To ensure that it is economically viable to manage the Register and to meet Council's obligation under the RM Act, Council will ensure that laneways and passageways are constructed or formed in line with standards to ensure safe access and to manage stormwater. Higher standard upgrades as per other policy objectives, such as the conversion of asphalt to bluestone laneways in heritage situations, will be referred to Council's long term capital works planning processes.
- 6.13. Laneways or passageways that are 'public roads' will have been considered as 'reasonably required for public use' such as by facilitating access or in some cases managing stormwater drainage (or be a 'public road' on another basis under the legislation). Any restrictions or blockages such as private gates or fencing will not be permitted and will be actively identified through inspections and removed via Council's compliance practices to ensure the integrity and facilitation of the public use.
- 6.14. In some cases, such as redevelopment of adjacent uses, the discontinuance of a laneway or passageway that is a 'public road' may be considered by Council. In such cases, the formal discontinuance process will apply (this process is distinct from the formal process to determine 'public roads').

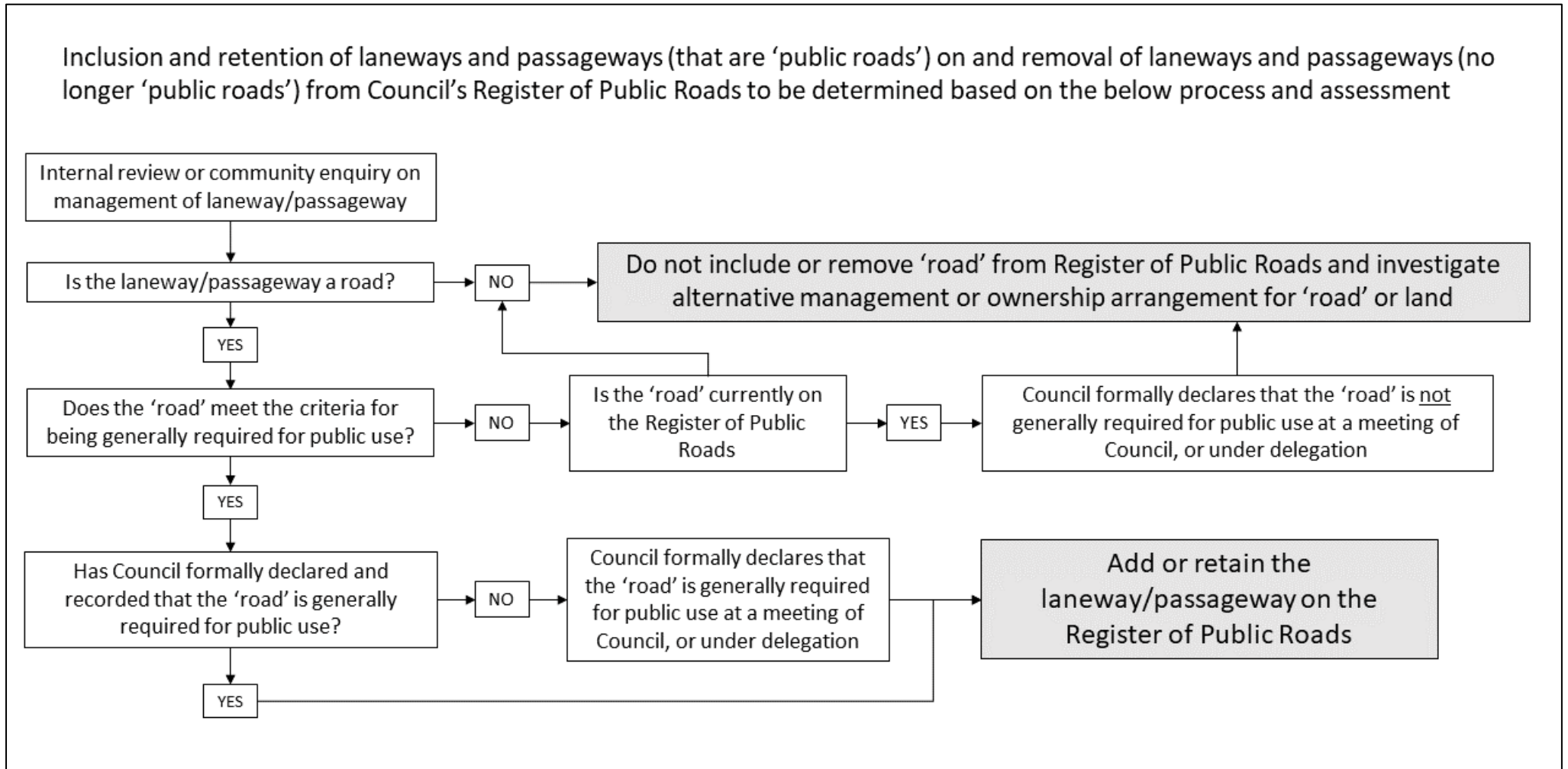


Figure 3 - Process to include, retain or remove 'public roads' on Register

Laneways or passageways that are 'public roads' will be managed as per the below process

(Any new laneways or passageways created through subdivision will only be adopted as Public Roads if constructed to Council standards)

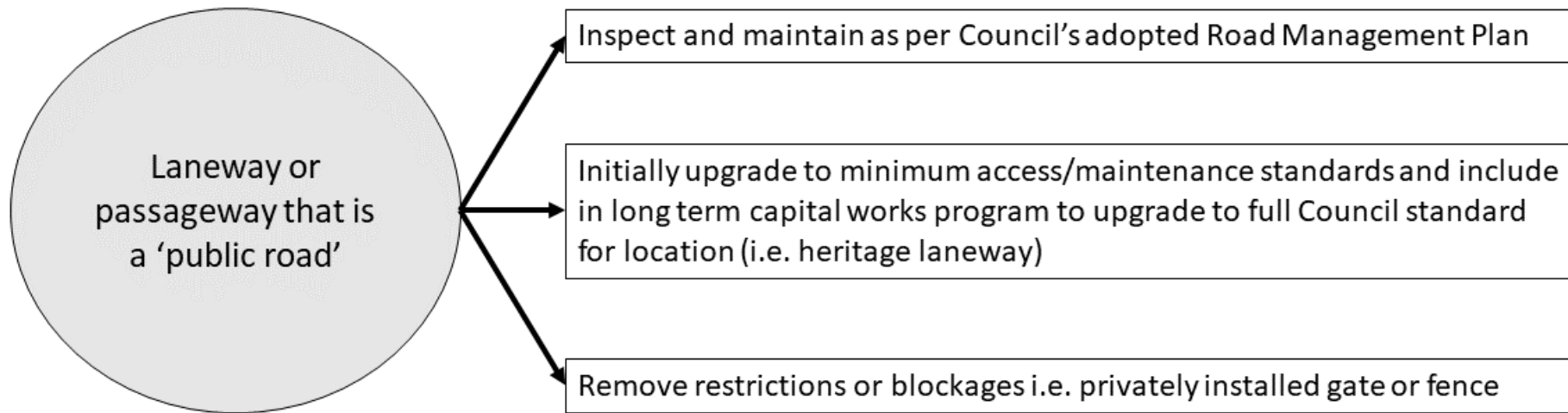


Figure 4 - Management of laneways and passageways that are 'public roads'

7. Management of laneways and passageways that are 'non-public' roads

- 7.1. For laneways and passageways in which Council has not decided are 'reasonably required for general public use', or has decided that they are no longer 'reasonably required for general public use', an alternative method of management is required.
- 7.2. The majority of laneways and passageways in Yarra that are not 'public roads' (i.e. 'non-public roads') will be 'roads' under legislation and will continue to be 'roads' until they are discontinued.
- 7.3. Examples of 'non-public' roads would include:
 - A laneway or passageway between properties that serves no other purpose than providing access to the properties; or
 - A disused laneway or passageway with the legal status of a 'road' that has been incorporated into a private development that has not been formally discontinued.
- 7.4. Council has the care and management of laneways and passageways that are 'non-public roads'.
- 7.5. However, Council does not have a statutory duty to inspect, maintain and repair 'roads' under its management that are not 'public roads'.
- 7.6. For 'non-public roads', Council will be at risk of liability for negligence only if it chooses to engage in such inspection, maintenance and repair, or undertakes activities that could be interpreted as imposing a duty on Council to inspect, maintain or repair the 'non-public road'.
- 7.7. In order to minimise this exposure to liability, Council will maintain a record of 'non-public roads' known to Council, and will manage 'non-public roads' as per the process set out in Figure 5 (page 13).
- 7.8. There will be no regular programmed inspections of 'non-public roads', although Council will respond to requests from the community regarding safety issues or hazards within the reactive inspection times set out in the RMP.
- 7.9. Council has discretionary powers to inspect, maintain and repair 'non-public roads'. Council will respond reactively to community requests for maintenance which will be limited to:
 - Localised repairs or hazard warning based on level of risk to the community as identified by the inspection.
 - Minimal standard of maintenance to extend the lifecycle of the road.
 - Laneways and passageways will not be upgraded to a higher standard to which the road is constructed or previously used.
- 7.10. Roads users have the right to pass along a 'non-public road' and will have this right until the road is discontinued.
- 7.11. Council will not permit blockages (i.e. privately installed gates and fences) on Council owned or managed 'non-public roads' that restrict the access rights of road users.
- 7.12. Council will reactively respond to requests regarding obstructions and blockages to laneways or passageways and will enforce the removal any obstructions or blockages, at its discretion, that restrict the previously provided access or minimum required access rights of road users.

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- 7.13. Identified obstructions will be managed as per Council's compliance process which allows a grace period for corresponding with Council officers and private removal of the obstruction before enforcement action is taken.
- 7.14. Council will not be required to remove encroachments to provide better than existing access (i.e. to facilitate car or larger vehicle access) on laneways or passageways that are 'non-public roads' given that there will be an alternative primary access (i.e. the public road').

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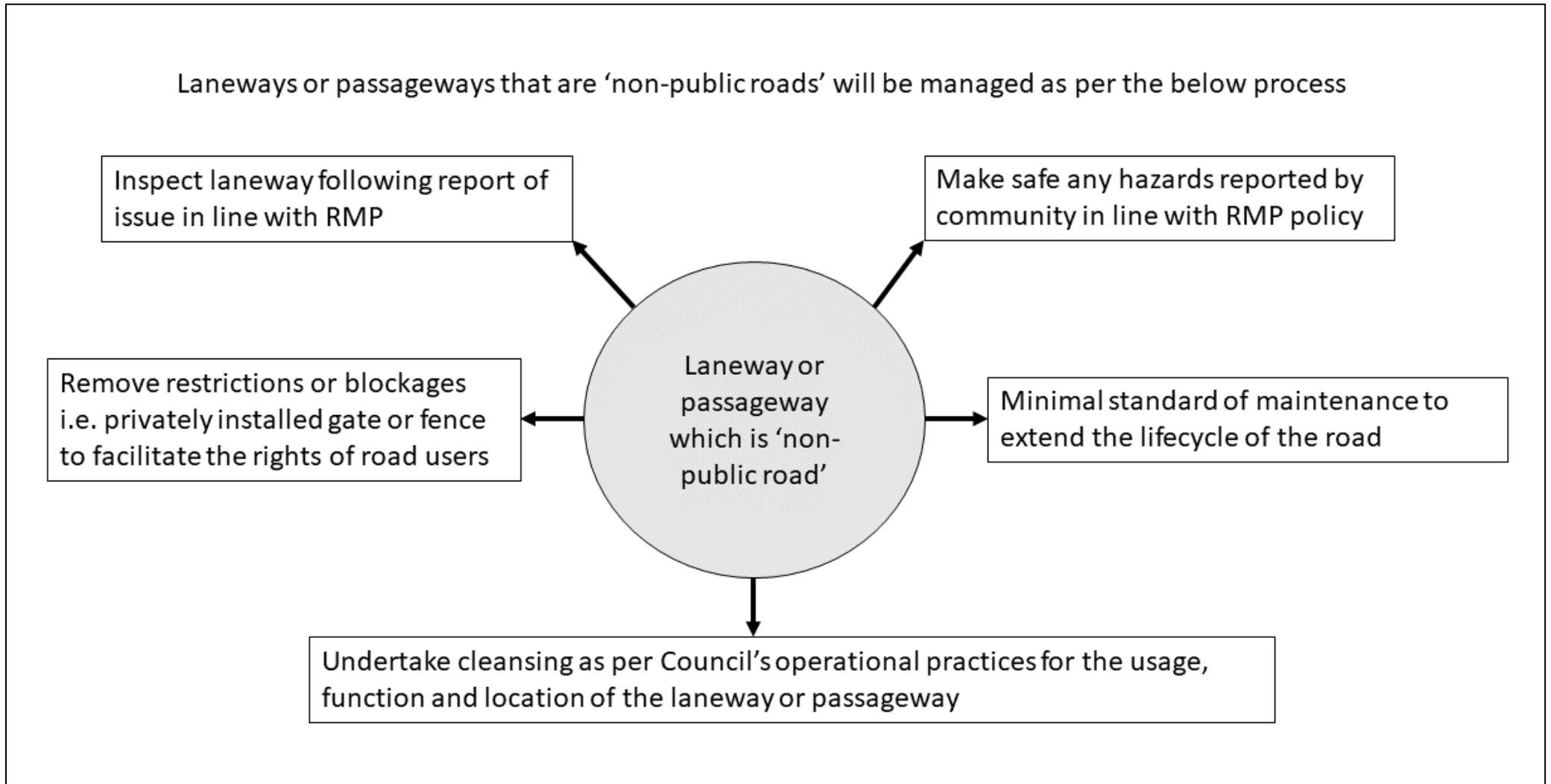


Figure 5 - Management of laneways and passageways that are 'non-public' roads

8. Management of laneways and passageways no longer required as 'roads'

- 8.1. Some laneways and passageways in Yarra are currently not required, or may never be required, as roads.
- 8.2. This would generally include:
- Laneways and passageways that are presently 'roads', where an alternative ownership or temporary management arrangement can be agreed that aligns with Council objectives and does not impact on the rights of adjacent property owners.
 - Disused roads incorporated into private property.
- 8.3. As Council only has discretionary requirements regarding the inspection of 'roads' that are not 'public roads', Council will not routinely undertake a program of determining whether a laneway or passageway should be discontinued as a 'road'.
- 8.4. This approach is considered justified as adverse possession does not apply in cases where the laneway or passageway is a 'road' and therefore there can be no unintended loss of public land.
- 8.5. Rather Council will review the ownership and management of the road, on a case by case basis, for example:
- Council has had an unsolicited approach by a landowner or group of landowners to consider the discontinuance of the road status of the land, laneway or passageway.
 - A request to consider discontinuance has come as a result of enforcement action where Council has received a request to enforce the Local Law relating to unpermitted blockages (i.e. private gating or fencing) of the land, laneway or passageway.
 - An internal review has identified that the cost of cleaning and maintaining the land as a 'road' has become poor value to the community and there is no legitimate or reasonable community benefit relating to further public expenditure.
- 8.6. Council has the power to discontinue roads, and subject to legislative requirements and Council policy, sell them to a third party or retain them for municipal purposes.
- 8.7. The review of ownership and management of a laneway or passageway will be based on the process and assessment set out in Figure 6 (page 17).
- 8.8. In cases where there is no strategic or longer term municipal value, Council's preference will be to discontinue the laneway or passageway and sell the land to a new owner based on a cost agreed with Council's Property Services branch.
- 8.9. Any proposed discontinuance that will result in private ownership of a laneway or passageway will occur as per the requirements of the RM Act or LG Act, as the case may be, and will be assessed by Council based on advice commissioned and prepared by Council officers, in line with these Act(s), and will take into consideration, for example:
- The interests of the general public, both now and going forward.
 - The requirements of emergency services and third party service authorities.
 - Impact on Council infrastructure, both now and going forward.

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- Impacts on adjacent property buildings, owners and occupiers.
- 8.10. In some instances, a Council decision to discontinue a road may result in the retention of the land under Council ownership and control. This may occur:
- Where an agreement cannot be reached with adjacent landowners on the sale of the land, but an alternative management arrangement can be agreed with Council.
 - Where the land has a strategic or longer term municipal value such as:
 - The potential for future public access or public infrastructure upgrade, where an interim alternative management arrangement can be agreed with Council.
 - The potential to facilitate future development as per Council's strategic planning objectives, where an interim alternative management arrangement can be agreed with Council.
 - Another important future community function as determined by Council, where an interim alternative management arrangement can be agreed with Council.
- 8.11. An alternative management agreement relates to the leasing of Council land for a period to be determined within a lease agreement between Council and the tenant.
- 8.12. The management responsibilities regarding the lease of a discontinued laneway or passageway is set out in Figure 7 (page 18).
- 8.13. The lease of the land will allow the tenant (or tenants) exclusive use of the land including the erection of temporary infrastructure (such as fences) subject to conditions including:
- The tenant being fully responsible for all cleaning and removal of rubbish.
 - The tenant being fully responsible for keeping the land in an acceptable condition.
 - The tenant reporting to Council any degradation of land that could result in a safety hazard that could result in a personal injury.
 - The tenant reporting to Council any requirement to maintain or repair the land.
 - The tenant agreeing to not making any permanent changes to the land or installing permanent structures on or above the land.
 - In the case of erection of gates blocking access to land, keys or access codes are to be supplied to adjoining owners with access rights to the land, and any agreed access rights are to be maintained and unrestricted.
 - The tenant enabling an annual inspection of the land by Council (or an inspection on request from Council if otherwise agreed).
 - The tenant agreeing to a payment of a bond as a means to recover costs if the land is not managed or maintained in line with the conditions of the lease arrangement.
 - The tenant accepting that the agreement may conclude, or not continue, at the end of the lease period, and that the lease may be revoked should the tenant not manage the land in line with the conditions of the lease agreement.
- 8.14. Council will respond reactively to tenant requests for maintenance which will be limited to:
- Localised repairs to make safe any potential hazards.

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- Minimal standard of maintenance to extend the lifecycle of the road.
 - The land will not be upgraded to a higher standard to which the land was constructed or previously used.
- 8.15. In instances where an alternative management arrangement cannot be agreed during the discontinuance process, the 'road' will not be discontinued, and the laneway or passageway will remain as a 'non-public road' and be managed as per the process set out in Figure 5 (page 13).
- 8.16. Council will maintain a record of leased land.

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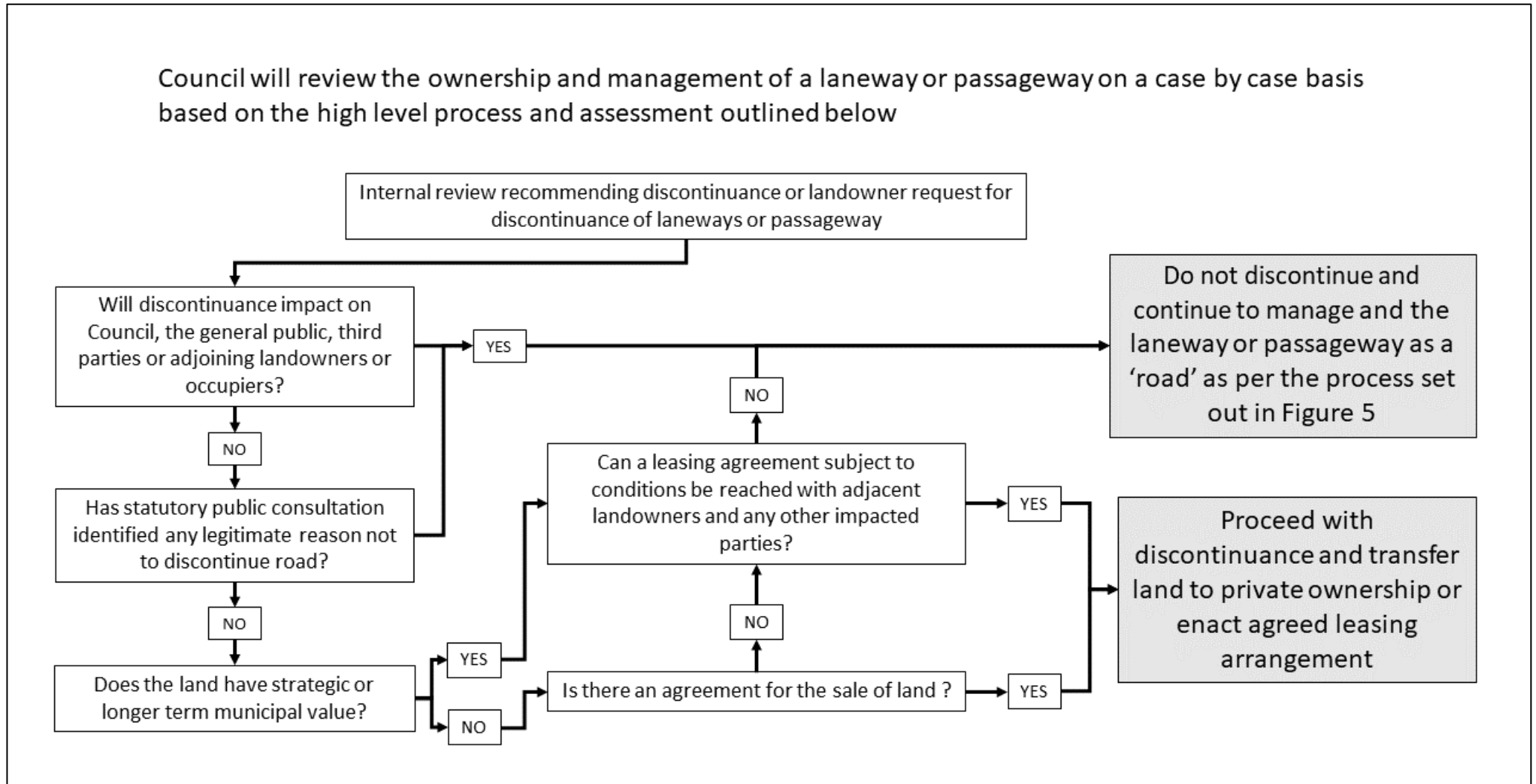


Figure 6 - Process to review ownership and management of laneway/passageway

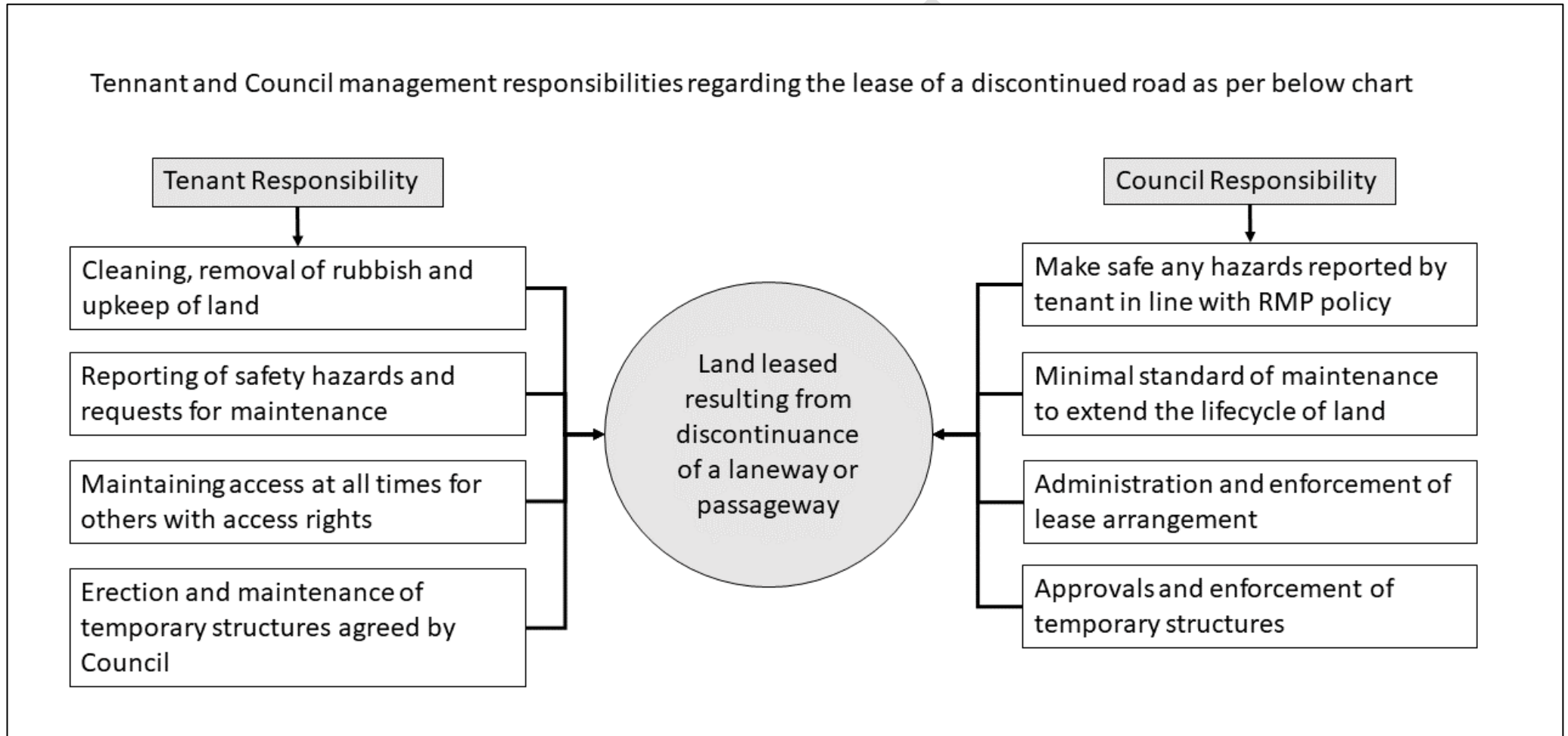


Figure 7 - Management of leased land resulting from discontinuance of a laneway or passageway

9. Responsibilities

- 9.1. The overall responsibility for the management of Council 'roads', 'public roads' and the Register sits with the Director City Works and Assets, and will be administered by branches within this division.
- 9.2. The overall responsibility for the administration of discontinuance of roads, the enforcement of Local Laws, and the leasing arrangements of Council discontinued roads sits with Director Corporate, Business and Finance and the Group Manager, Chief Executive's Office.
- 9.3. All Council staff involved in the management of laneways and passageways must inform the relevant administrating branch of any changes or agreements regarding the ownership and management of laneways and passageways in Yarra.

10. Review of Management Policy

- 10.1. This policy is an ongoing requirement as the Register will be continually reviewed and updated.
- 10.2. This policy will be reviewed and amended as required within each term of Council.
- 10.3. This policy will also be reviewed as part of the review of Council's RMP.

11. References

Road Management Act 2004

Local Government Act 1989

Yarra City Council Road Management Plan 2017

Appendix A: Summary of responsibilities: public roads, roads and non-roads

	Laneways that are 'public roads' under RM Act	Laneways that are 'roads' (non-public) under RM Act	Laneways that are not 'roads' under RM Act
<p>Description/example</p> <p>[s 3(1) – definition of 'road'] [s 17(1) – definition of 'public road'] [s 12 – discontinuance of roads]</p>	<p>Only laneways that are 'roads' may be 'public roads' (see next column).</p> <p>Usually a laneway will be a 'public road' only if Council has made a decision, in writing that it is a road that is 'reasonably required for general public use'.</p> <p>Reasons for decision:</p> <ul style="list-style-type: none"> - the laneway is currently and regularly used by the public (generally a sufficient reason on its own); and/or - the laneway connects into and/or forms part of the wider road network; - the laneway abuts land used by the general public: eg public open space, community facilities, car park; - to facilitate future development of neighbouring properties; and/or 	<p>Most laneways are 'roads' under the RM Act, but some are not.</p> <p>A laneway is a 'road' if it is a 'highway' under the common law, ie, it has been used:</p> <ul style="list-style-type: none"> - by the public; - as of right (not trespass or by invitation); - for a long and uninterrupted period of time; - even if <i>no longer</i> used by the public. <p>Other factors that may mean a laneway is a 'road':</p> <ul style="list-style-type: none"> - Council owns it or has access to it; - it is maintained and repaired at the public expense; - it is well-defined (constructed, fenced off); - it leads from one road to another; 	<p>Some laneways are not 'roads' under the RM Act, because:</p> <ul style="list-style-type: none"> - they do not meet definition of 'road' in the RM Act (see column to left); or - they have formally been discontinued as a roads under the RM Act.



	Laneways that are 'public roads' under RM Act	Laneways that are 'roads' (non-public) under RM Act	Laneways that are not 'roads' under RM Act
	<ul style="list-style-type: none"> - the laneway contains public utilities or is required for fire access. <p>(Alternatively, a laneway will be a 'public road' under the RM Act if Council has declared it to be a public highway under the LG Act.)</p>	<ul style="list-style-type: none"> - it is set aside for public use as a planning permit condition; and/or - it is named and signed. <p>(Alternatively, a laneway will be a 'road' under the RM Act if Council has declared it to be road under the RM Act.)</p>	
<p>Register</p> <p>[ss 17 and 19(4)]</p>	<p>Yes, must be added to the Register once it becomes a 'public road', eg:</p> <ul style="list-style-type: none"> - once Council decides it is reasonably required for general public use; or - once Council declares it to be a public highway under the LG Act. <p>Note: a laneway is <i>not</i> converted into a 'public road' by being placed on the Register (see row above).</p>	<p>No, need not be on the Register (and, if appears on the Register, should be removed).</p> <p>Note:</p> <ul style="list-style-type: none"> - If Council <i>has never made a decision</i> about whether a particular laneway is reasonably required for general public use, the laneway may immediately be removed from the Register (no decision required). - If Council <i>has previously made a decision</i> that a laneway is reasonably required for general public use – the laneway is a 'public road' and must remain on the Register until Council makes another decision that the laneway is 	<p>No, need not be on the Register (and, if appears on the Register, should be removed).</p> <p>Note:</p> <ul style="list-style-type: none"> - If the laneway is a former 'public road' that has been discontinued, the Register must note this.



	Laneways that are 'public roads' under RM Act	Laneways that are 'roads' (non-public) under RM Act	Laneways that are not 'roads' under RM Act
		no longer reasonably required for general public use (which will convert the laneway to a 'road' rather than a 'public road').	
<p>Status</p> <p>[s 108 and Schedule 5 – status of roads] [ss 7–9 – rights of road users] [ss 10; 12 – discontinuance]</p>	<p>'Public roads' are a subset of 'roads' under the RM Act, therefore:</p> <ul style="list-style-type: none"> - vest in Council, as owner, typically free of any mortgages, leases etc; - are not subject to adverse possession or easements by long use; - cannot be sold or leased; - cannot support private rights of way or easements; and - are not 'premises' and Council is not an 'occupier' for law of negligence. <p>The public has rights in relation to 'roads', including 'public roads', under the RM Act:</p> <ul style="list-style-type: none"> - all members of the public have a right of passage; and - owners and occupiers of adjoining land have right of access to road from their land. 	<p>'Roads' under the RM Act:</p> <ul style="list-style-type: none"> - vest in Council, as owner, typically free of any mortgages, leases etc; - are not subject to adverse possession or easements by long use; - cannot be sold or leased; - cannot support private rights of way or easements; and - are not 'premises' and Council is not an 'occupier' for law of negligence. <p>The public has rights in relation to 'roads' under the RM Act:</p> <ul style="list-style-type: none"> - all members of the public have a right of passage; and - owners and occupiers of adjoining land have right of access to road from their land. 	<p>No status as 'roads' – ordinary parcels of land:</p> <ul style="list-style-type: none"> - if discontinued, ordinarily vest in Council; - capable of being subject to mortgages, leases; - capable of being subject to private rights of way or easements; - capable of adverse possession or easement by long use; - may be sold or leased; and - 'occupier' liability is possible. <p>The rights of road users are inapplicable, as not roads.</p>



	Laneways that are 'public roads' under RM Act	Laneways that are 'roads' (non-public) under RM Act	Laneways that are not 'roads' under RM Act
<p>Council functions and powers to inspect, maintain and repair</p> <p>[ss 36(c) and 37(1)(e) – Council is road authority for municipal roads] [s 34 – functions of road authority] [s 35 – powers of road authority]</p>	<p>Yes – Council is the 'responsible road authority' and the 'coordinating road authority'.</p> <p>See also Council's functions and powers related to roads under the LG Act.</p>	<p>Yes – Council is the 'responsible road authority' and the 'coordinating road authority'.</p> <p>See also Council's functions and powers related to roads under the LG Act.</p>	<p>No – no 'road authority' in relation to land that is a not a road.</p> <p>If Council is owner and/or occupier of laneway, may have functions and powers to inspect, maintain and repair in this capacity (see eg s 14B of the Wrongs Act).</p>
<p>Duty to inspect, maintain and repair</p> <p>[s 40(1) – duty (public roads)] [ss 40(5) and 107 – no duty (non-public roads)]</p>	<p>Yes – express statutory duty on Council as road authority to inspect, maintain and repair public roads.</p> <p>Standard to which duty to be performed is that specified in:</p> <ul style="list-style-type: none"> - Council's Road Management Plan; - failing that, any relevant policy; or - failing that by reference to s 101. 	<p>No – express exclusion of any duty on road authority to inspect, maintain and repair non-public roads.</p> <p>Note: If Council chooses to inspect, maintain and repair non-public roads, it may be liable if it does so negligently.</p>	<p>No – no 'road authority' in relation to land that is a not a road.</p> <p>If Council is owner and/or occupier of laneway, may have a duty to inspect, maintain and repair in this capacity (see eg s 14B of the Wrongs Act).</p>
<p>Liability</p> <p>[s 40(1) – duty (public roads)] [ss 40(5) and 107 – no duty (non-public roads)] [ss 39, 101–107 – defences/limitations]</p>	<p>Council may be exposed to liability for:</p> <ul style="list-style-type: none"> - failing to perform statutory duty to inspect, maintain or repair; or - performing such duty below the required standard. <p>Defences/limitations:</p> <ul style="list-style-type: none"> - duty always satisfied (any proceeding) if Council acts 	<p>Council may be exposed to liability for negligence in inspecting, maintain and repairing laneways, but only if it chooses to engage in such functions.</p> <p>Defences/limitations:</p> <ul style="list-style-type: none"> - if Council chooses to inspect, maintain and 	<p>N/A</p>



	Laneways that are 'public roads' under RM Act	Laneways that are 'roads' (non-public) under RM Act	Laneways that are not 'roads' under RM Act
	<p>in accordance with reasonably Road Management Plan or any relevant policy;</p> <ul style="list-style-type: none">- no negligence if acted in accordance with factors in s 101;- no negligence if had no actual knowledge of hazard or defect; and- no negligence if took care reasonably required to ensure not dangerous to traffic.	<p>repair, does so satisfactorily (any proceeding) if Council acts in accordance with reasonably Road Management Plan or any relevant policy;</p> <ul style="list-style-type: none">- no negligence if acted in accordance with factors in s 101; and- no negligence if another person was under a duty to do the inspection, maintenance or repair.	