

PURPOSE

This Policy determines the ownership and the maintenance responsibility for retaining walls.

SCOPE

This Policy applies to:

- Retaining walls which are wholly or partially within Council's Road reserve and Council's property.

STRATEGIC PLAN ALIGNMENT

3.1.3 Manage the City's transport network and the associated infrastructure to promote sustainability, accessibility, choice, safety, and amenity for all modes of transport.

STATUTORY REQUIREMENTS

Acts	<i>Local Government (Highways) Act 1982- Section 35 and 208</i> <i>Building Act 2016</i> <i>Tasmanian Planning Scheme 2021</i>
Regulations	
Australian/International Standards	AS 4678—2002 - Earth-retaining structures

DEFINITIONS

Retaining Wall – A common structure, which is designed and constructed within steep terrain to provide a level area for roads, properties, and driveways to be built.

Road Reserve – A legally described area where facilities such as roads, footpaths, and associated features may be constructed for public travel. It is the total area showing on the municipal road map.

Road Occupancy Agreement – An agreement granted by Glenorchy City Council allowing occupancy of a road reserve for a specific purpose and for a set period.

Natural Ground Level – The natural level of the site before any excavation or filling (in the past or as a part of any proposed development) has been carried out on the site.

BACKGROUND

In the Glenorchy municipality, there are many retaining walls which have been built within the road reserve, on Council land or on its boundary either by Council or privately.

Due to the lack of historical information about these retaining walls, determining the ownership and maintenance responsibility can be difficult.

Council is approached by residents from time to time seeking clarification and raising concerns about retaining walls. It is important that Council forms a policy to provide a clear and consistent guidance of the ownership thus maintenance responsibility to its officers and the public.

DETERMINING OWNERSHIP AND MAINTENANCE RESPONSIBILITY

In the absence of clear historical information suggesting the contrary, ongoing ownership and maintenance responsibility for retaining walls is, in general, to be determined based on their location and who is benefitting from the wall. The natural ground level is an important factor in determining the ownership and who originally benefitted from the wall.

If the wall was originally built for the purpose of constructing a public road, Council assumes the ownership and maintenance responsibility.

If the wall was originally built for the purpose of a levelling the ground on the private property or for a driveway access, the wall is deemed to be privately owned and maintained.

If a Council owned retaining wall is damaged by a third party, it will be their responsibility to effect repairs to Council's standard. Council may take enforcement action which may include repairing the wall and recouping costs from the responsible person.

If a private retaining wall causes or is likely to cause a safety risk to the public, Council may take enforcement action, which may include Council repairing the wall and/or close off the footpath/road, then retrieving costs from the responsible person. If the private wall forms part of their driveway, then section 35 of the Local Government (Highway) Act applies and if within their property boundary, then the Building Act applies.

The following scenarios outline the rules for identifying ownership and maintenance responsibility of retaining walls:

1. Retaining Wall within the road reservation or on the boundary

If the wall was originally built for the purpose of constructing a public road, Council resumes the ownership and maintenance responsibility. The following are exceptions:

- The wall predominantly forms part of the driveway or provides pedestrian access to the private property(s).
- The wall was built due to excavation as part of a development or to benefit the private property(s) often to obtain more level ground.
- The wall provides no physical support to the public road and was not necessary to form the road; or
- The wall received a Road Occupancy Agreement (ROA) or any other agreement such as showing ownership on plans as part of a development, for the property owner to build and/or own the wall which is still relevant and applicable even if the property has changed hands.

If ownership is unclear, the wall is assumed to be private unless documentation can demonstrate otherwise.

Council's Manger of Infrastructure, Engineering and Design can determine ownership and, in some cases, where ownership is unclear, come to an agreement with the property owner.

2. Retaining Wall within Council property, or on the boundary of Council property other than road reserve

Any retaining wall within Council's property, other than a road reserve, the ownership and maintenance responsibility will sit with the party who is benefitting from the wall.

If the private owner questions the ownership and maintenance responsibility of the retaining wall outlined above or disagree with Council officer's assessment based on the Policy, they may wish to take further actions, including seeking independent legal advice, to clarify the ownership and maintenance responsibility.

RETAINING WALL AS PART OF FUTURE WORKS AND DEVELOPMENT

Any new, renewed or upgraded retaining wall as part of future works and development, needs to meet all the legislative requirements such as planning and building. This policy provides no exemption or consent to any works that are regulated under the relevant road, planning, or building regulations.

The approval of new private retaining walls in the road reserve or on our boundary are very limited, apart from driveway access or providing pedestrian access to a property.

If a property owner or third party proposes to build a retaining wall on Council land as a part of a development, consent is required from Council's General Manager to lodge the planning application and a ROA is required within the road reserve, prior to the commencement of the work. If a new retaining wall is proposed as part of a subdivision or on the property boundary, then ownership will be clearly stated on the development and building plans.

With existing private retaining walls in the road reserve, a ROA should be entered into between the owner and Council.

TECHNICAL GUIDELINE

Council staff will develop and maintain a Retaining Wall Technical Guideline for the provision of detailed identification of ownership and information regarding requirements for new walls. The technical guidelines will be maintained and reviewed by Council's technical staff on an ongoing basis to ensure it aligns with the latest standards and guidelines.

DOCUMENT CONTROL

Version:	1.0	Adopted	27 June 2022	Commencement Date	28 June 2022
Minutes Reference	Council Meeting, 27 June 2022, Item 12			Review Period	4 Years from adoption
Previous Versions:	N/A				
Responsible Directorate	Infrastructure & Works	Controller:	Manager Infrastructure Engineering and Design		
ECM Document No.:					