

SERVICES SPECIAL COMMITTEE

AGENDA

6.30pm, Monday 13 February 2012

Council Chamber, 8 Inglesby Road, Camberwell.

Order of business

- 1. Apologies**
- 2. Adoption and confirmation of the minutes of the Services Special Committee meeting held on Monday 19 December 2011**
- 3. Declaration of conflict of interest of any councillor or council officer**
- 4. Presentation of officer reports**
 1. 26A and 34 to 40 Connell Street Hawthorn - Proposed discontinuance and sale of adjoining Right of Way (road)
 2. 49 Lynden Street Camberwell - Proposed discontinuance and sale of adjoining Right of Way (road)
- 5. General business**
- 6. Urgent business**
- 7. Confidential business**

Close of meeting

2 February 2012
(Date of Issue)

Table of contents

4. Presentation of officer reports

SC1	26A and 34 to 40 Connell Street Hawthorn - Proposed discontinuance and sale of adjoining Right of Way (road)	3
SC2	49 Lynden Street Camberwell - Proposed discontinuance and sale of adjoining Right of Way (road)	7

SC1 26A and 34 to 40 Connell Street Hawthorn - Proposed discontinuance and sale of adjoining Right of Way (road)

Abstract

This report is to consider commencement of the statutory procedures to discontinue and sell the section of road adjoining 26A and 34 to 40 Connell Street, Hawthorn.

Council has received a request from one of the owners abutting the section of right of way (road) adjoining 26A and 34 to 40 Connell Street, Hawthorn.

The owners of 26A and 34, 36 and 38 Connell Street have all expressed interest in acquiring the land in the event of Council being able to complete the discontinuance.

Officers' recommendation

That Council acting under Section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* ("the Act") resolve to:

1. Commence the statutory procedures to discontinue the section of road adjoining 26A and 34 to 40 Connell Street, Hawthorn, which is shown hatched in Attachment 1 (as annexed to the minutes).
2. Give Public Notice under Sections 207A, 223 and 82A of the Act of the proposed discontinuance in the appropriate newspaper and on Council's website and such notice state that if discontinued, Council proposes to sell the land from the road.

**Responsible director: Bruce Dobson
Corporate Services**

1. Purpose

This report is to consider commencement of the necessary statutory procedures for the discontinuance and sale of a section of right of way (road) adjoining 26A and 34 to 40 Connell Street, Hawthorn.

2. Policy implications and relevance to council plan

This matter is addressed under Council's Discontinuance of Roads and Reserves Policy.

This report is consistent with the Council Plan June 2011 and in particular to two strategic objectives under the Plan – *"Ensuring Liveability and Amenity"* and *"Community Engagement"*.

3. Background

Council received a request from an abutting property owner for the discontinuance and sale of the road adjoining the above properties, as shown hatched in **Attachments 1 and 2**.

Whilst the above road is physically "open", it has not been used for access and has partially been fenced off in recent times.

4. Outline of key issues/options

This report has been prepared in accordance with Council's Discontinuance of Roads and Reserves Policy.

5. Consultation/communication

A survey of adjoining property owners has been completed with general agreement to the discontinuance reached. The owners of 26A and 34, 36 and 38 Connell Street have all expressed interest in acquiring the land in the event of Council being able to complete the discontinuance. See **Attachment 3** for the proposed apportionment of land from the road, if discontinued, between the four properties, which has been discussed with each of the adjoining owners. See **Attachment 4** for aerial view and **Attachment 5** for a photograph looking east, of section of right of right, proposed to be discontinued and sold.

The following service authorities have been consulted:

- Yarra Valley Water
- Melbourne Water
- Telstra
- Multinet Gas
- Citipower
- Optus
- SPI Powernet
- GasNet Australia (gas mains)

No objections from the abovementioned authorities have been received. However, as the road leads down towards an open Melbourne Water drain at the rear of the Connell Street properties Melbourne Water requires an easement to be saved over part of the road immediately adjoining its drain. This will be done as part of the discontinuance process.

The following Council departments have been consulted:

- Building Services
- Statutory Planning
- Engineering & Traffic
- Asset Management
- Parks & Gardens

Council's Engineering & Traffic department has advised that whilst the road does not contain any drainage assets at present, Council may need to construct a drain within the land in the future. Therefore it requires that an easement be created over any land sold from the road. Accordingly an easement will be 'saved' in favour of Council as part of the proposed discontinuance process.

Parks and Gardens have assessed an existing elm tree as meeting the definition of significant and the owner has been advised the tree needs to be retained.

No issues have been raised by the other departments.

6. Financial and resource implications

The land has been valued in accordance with the current policy and Council's income is estimated at \$35,640 (including GST).

7. Governance issues

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

8. Social and environmental issues

Whilst the proposal does not give rise to any social or environmental issues it will generate once off income for Council as a result of the sale of the land together with an ability to rate the land in the future.

9. Evaluation and review

Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants Macquarie Lawyers & Strategists and no issues have been identified.

10. Conclusion

It is considered that the section of road adjoining 26A and 34 to 40 Connell Street, Hawthorn, is not reasonably required as a road for public use and as such is appropriate that procedures be commenced for its discontinuance and sale.

Manager: Chris Hurley, Financial Services

Report officer: John Lorkin, Co-ordinator Revenue & Property

SC2 49 Lynden Street Camberwell - Proposed discontinuance and sale of adjoining Right of Way (road)

Abstract

This report is to consider commencement of the statutory procedures to discontinue and sell the road adjacent to 49 Lynden Street, Camberwell and to consider a suitable purchase price for the land from the road, together with any conditions of sale, if discontinued.

The section of road is no longer required for public access and its sale to Lynden Aged Care Association Inc. is recommended.

Confidential information is contained in **Attachment 4** as circulated in the confidential section of the agenda attachments, in accordance with Section 89(2) of the *Local Government Act 1989*, as the information relates to contractual matters and proposed developments and premature disclosure of the information could be prejudicial to the interests of Council or other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making.

If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Officers' recommendation

That Council acting under Section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* ("the Act") resolve to:

1. Commence the statutory procedures to discontinue the road adjacent 49 Lynden Street, Camberwell, shown hatched on Attachment 1 (as annexed to the minutes).
2. Give Public Notice of the proposed discontinuance in the appropriate newspaper and on Council's website, under Sections 207A, 223 and 82A of the Act, and such notice state that if discontinued, Council proposes to sell the land from the road.
3. In the event the road is discontinued, the land from the road be sold to Lynden Aged Care Association Inc. in accordance with the arrangements outlined in Confidential Attachment 4.
4. In the event the road is discontinued, the sale of the land from the road be subject to Lyndon Aged Care Association Inc. entering into an Agreement pursuant to Section 173 of the *Planning & Environment Act 1987* requiring that the use of the land be limited to that of an Aged Persons' Hostel, Nursing Home and Retirement Village or such other charitable/not for profit purpose for the benefit of aged persons subject to Council approval, on an ongoing basis.

**Responsible director: Bruce Dobson
Corporate Services**

1. Purpose

This report is to consider commencement of the necessary statutory procedures for the discontinuance and sale of a section of road adjacent 49 Lynden Street, Camberwell and to consider a suitable purchase price for the land from the road, together with any conditions of sale, if discontinued.

2. Policy implications and relevance to council plan

This matter is addressed under Council's Discontinuance of Roads and Reserves Policy.

This report is consistent with the Council Plan June 2011 and in particular to two strategic objectives under the Plan - "*Ensuring Liveability and Amenity*" and "*Community Engagement*".

3. Background

Council received a request from Lynden Aged Care Association Inc. (LACA) for the discontinuance and sale of the road adjacent to its property at 49 and 51 Lynden Street, Camberwell, as shown hatched on **Attachment 1**.

The road is contained within certificate of title Vol. 9540 Fol. 301 and known as Road R1 on LP140857 - refer **Attachment 2**. The City of Boroondara is the registered proprietor of the land.

LACA is a not for profit organisation initially established by the former City of Camberwell for the purpose of providing aged accommodation within the municipality. At present it operates a 70 bed nursing home on the site at 49 Lynden Street.

The request from LACA has arisen as a result of its intention to both expand the existing aged care facility at 49 Lynden Street (from 70 to 98 beds) and to construct 6 retirement apartments at 51 Lynden Street.

LACA have advised that should their request be successful, they have no plans to construct over the land. Acquisition of the land would, however, aid their construction intentions as currently the road status of the land imposes certain 'set back' conditions upon development plans.

Part of the land from the road has been constructed as both an access road to the nursing home and internal car park. The remainder of the road is used for landscaping and according to available information is fully maintained by LACA.

Whilst the properties known as 47, 51 & 53 Lynden Street and 16A Cornell Street (only 0.77m) abut the subject road, none of these properties appear to use the road for pedestrian or vehicular access. Further, none of these properties have express rights of carriageway over the road on title as the land only became a road as a result of a more recent subdivision in 1983 (LP140857).

LACA have advised that since at least 1981 they have assumed full responsibility for all aspects of the road including all repairs, maintenance and landscaping and Council's Asset Management department has confirmed that it is considered to be a "private" access road and that Lynden Aged care is responsible for the maintenance of the road.

Attachment 3 details the background and legal structure of LACA together with the history of the site and the proposed expansion of the facility.

4. Outline of key issues/options

In preparing this report, officers have considered the following issues:

- LACA is a not for profit organisation providing an important community service and has a close nexus with the local community.
- Whilst the road was created to service the 2 lots created via the 1983 subdivision (LP140857), the decision to return those two lots back into one large lot in 1989, essentially made the road redundant.
- Essentially, this is an internal road / car park servicing the Lynden facility only. Lynden Aged Care and its visitors are the sole users of the road and Lynden has maintained the road over the years. None of the owners / occupiers of the adjoining properties appear to use the road.

In providing 70 aged care beds, LACA fulfils an important role in caring for elderly Boroondara citizens. LACA has advised that the proposed extension to the facility would increase the number of beds to 98.

Boroondara is characterised by an ageing population, with just over 30,000 people over the age of 65 years living in Boroondara. Between 2006 and 2031 this ageing population is expected to increase by 41% (an increase of 12,315 people). Whilst it is preferred to keep people living in their own home for as long as possible with the appropriate supports in place, it is anticipated that the demand for residential aged care will increase in the future.

The road is essentially operating as a private driveway and car park servicing the Lynden aged care facility only. The road could have been discontinued and combined with the main site as part of the 1991 consolidation of titles (CP171652SA). This would have seen the land upon which the road now sits being transferred to LACA as part of one large lot by the former City of Camberwell in 1994.

As with the transfer of the main site by the former City of Camberwell in 1994, the sale could be made conditional upon LACA entering into an agreement with Council pursuant to section 173 of the *Planning & Environment Act 1987* requiring that the use of the land be limited to that of an Aged Persons' Hostel, Nursing Home and Retirement Village or such other charitable / not for profit purpose for the benefit of Aged Persons that Council may from time to time approve.

5. Consultation/communication

The adjoining property owners at 47, 51 & 53 Lynden Street and 16A Cornell Street have been informed of the proposal and no written comments have been received.

The following service authorities have been consulted:

- Melbourne Water
- Telstra
- Yarra Valley Water
- CityPower
- Optus
- SPI PowerNet,
- Multinet Gas
- APA GasNet

No objections from the abovementioned authorities have been received. However, Telstra, Yarra Valley Water, Multinet Gas and CitiPower all have assets in the road, therefore, the necessary easements will be 'saved' as part of the proposed discontinuance process.

The following Council departments have been consulted:

- Building Services
- Statutory Planning
- Strategic Planning
- Engineering & Traffic
- Asset Management
- Parks & Gardens
- Health Ageing and Disability Services

No objections have been received, however, Council has a drain within the land. Accordingly an easement will be saved as part of the proposed discontinuance process.

A further issue raised by Engineering & Traffic is the existence of four (4) CitiPower poles in the road. Two (2) of the poles have a street light installed. The lights provide illumination for the road and pathway leading into and around the Lynden Aged Care facility and Council is currently paying electricity supply charges. Should the discontinuance of the road proceed the CitiPower lights would need to be "decommissioned" by CitiPower so that Council does not continue to pay the supply charge. If the Lynden Aged Care facility required lighting for the roadway and path then a metered supply arrangement would need to be negotiated by LACA with Citipower or a private lighting scheme installed.

6. Financial and resource implications

Details are contained in the **Confidential Attachment 4**.

7. Governance issues

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

In the interests of good governance and transparency, it is noted that Council's Manager Community Planning, Dr Helen Molnar, is a member of the LACA Board. Dr Molnar's membership of the board is undertaken in her personal capacity and reflects her long standing interest and commitment to the not-for-profit and Aged Care sectors. Dr Molnar is not a Council appointed board member, nor a delegated Council representative. Dr Molnar has provided a written statement advising that she has absented herself from any board discussion of this proposed transaction.

8. Social and environmental issues

The proposed discontinuance and sale of the road will assist LACA with its expansion plans in order to provide additional aged care facilities for the community.

9. Evaluation and review

Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants Macquarie Lawyers & Strategists and no issues have been identified.

10. Conclusion

It is considered that the section of road adjacent 49 Lynden Street, Camberwell is not reasonably required as a road for public use and as such is appropriate that procedures be commenced for its discontinuance and sale.

Manager: Chris Hurley, Financial Services

Report officer: John Lorkin, Coordinator Revenue & Property