

7.2 Rear of 49 Kinkora Road, Hawthorn - Proposed discontinuance and sale of right of way (road)

Abstract

This report is to consider commencement of the statutory procedures to discontinue and sell the road at the rear of 49 Kinkora Road, Hawthorn. It is considered by officers the section of road is no longer required for public access and has been enclosed within the adjoining property for in excess of 15 years.

Consultation has been undertaken with relevant Council departments and external service authorities as detailed in section 5 of the report. No objections have been received.

The proposed commencement of the statutory procedures requires Council to give public notice of its intention to discontinue and sell the road and invite submissions from affected parties.

The report also proposes consideration be given to applying relevant policy statements from Council's Discontinuance of Roads and Reserves Policy.

Confidential information is contained in **Attachment 4**, as circulated in the confidential section of the agenda attachments, in accordance with Section 66(2)(a) and the definition of 'confidential information' in Section 3(1) of the Local Government Act 2020 as the information relates to Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released. 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* (Vic) ("the Act"), resolves to:

1. Commence the statutory procedures to discontinue the road at the rear of 49 Kinkora Road, Hawthorn, shown hatched in **Attachment 1** and 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 and 223 of the Act, and for such notice to state if discontinued, Council proposes to sell the land from the road to the owners of 49 Kinkora Road, Hawthorn by private treaty.
3. If no submissions are received following the publication of the public notice, authorise the Chief Executive Officer, or such other person as the Chief Executive Officer approves, to undertake the necessary procedural steps to complete the formal procedures for the discontinuance and sale of the land from the road to the owners of 49 Kinkora Road, Hawthorn, including the execution of all relevant documentation, in accordance with the purchase price detailed in **Attachment 4** of this report and annexed to the confidential minutes.

4. Note as the section of road which is proposed to be discontinued is currently listed on Council's Register of Public Roads ("the Register") under the *Road Management Act 2004* (Vic), its removal from the Register will be attended to if a decision is taken by Council to discontinue the section of road as it will no longer be considered to be reasonably required for general public use.
5. In the event submissions are received, note a further report will be presented to Council to enable consideration of the submissions.

Responsible director: Phillip Storer, Chief Executive Officer

1. Purpose

This report is to consider commencement of the statutory procedures for the discontinuance and sale of a section of right of way (road) at the rear of 49 Kinkora Road, Hawthorn, shown hatched in **Attachment 1** and to consider application of Policy Statement 3, Principle 2 of Council's Discontinuance of Roads and Reserves Policy.

2. Policy implications and relevance to community plan and council plan

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

This report is consistent with the Council Plan 2017-21 and the Boroondara Community Plan. In particular, the Council Plan theme of Civic Leadership and Governance, Strategic Objective 7 - *"Ensure sound financial management while allocating resources to deliver strategic infrastructure and services that meet community needs"*.

3. Background

Council received a request from the owners of 49 Kinkora Road, Hawthorn for the discontinuance and sale of the road at the rear of the property, as shown hatched in **Attachment 1**.

The section of the road is not constructed and remains in the name of the original subdivider.

The road has been enclosed within 49 Kinkora Road, Hawthorn for in excess of 15 years and is no longer used for access.

See **Attachment 2** for the draft title plan showing the proposed allocation of the land if the road is discontinued.

See **Attachment 3** for an aerial view.

4. Outline of key issues/options

The section of road is considered by officers to be no longer required for public access and has been enclosed within the adjoining property for in excess of 15 years.

5. Consultation/communication

The owners of 49 Kinkora Road, Hawthorn have agreed to acquire the land if the discontinuance is successful.

The following service authorities have been consulted:

- Yarra Valley Water
- Melbourne Water
- Telstra

- Multinet Gas
- CitiPower / United Energy
- Optus
- AusNet Transmission Services (major electricity transmission lines)

No objections, or requirements from the abovementioned authorities have been received.

The following Council departments have been consulted:

- Building Services
- Strategic and Statutory Planning
- Traffic and Transport
- Asset and Capital Planning

No objections from the abovementioned departments have been received and Council does not have any assets located in the road.

The section of road is currently listed on Council's Register of Public Roads ("the Register") under the *Road Management Act 2004* (Vic). Its removal from the Register will be attended to if a decision is taken by Council to discontinue the section of road as it will no longer be considered to be reasonably required for general public use.

The statutory procedures require Council to give public notice of its intention to discontinue and sell the road and invite submissions from affected parties. In addition, all adjoining property owners will be advised of the proposal in writing and informed of their right to make a submission. Notification will also be given on Council's website.

Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise with the proposal.

If any submissions are received, a further report will be presented to a future meeting of the Services Delegated Committee of Council to enable the consideration of any submissions and for a decision on whether to discontinue the road in full, in part or not to discontinue the road.

If no submissions are received, the Chief Executive Officer, or any such other person as the Chief Executive Officer approves, will undertake the necessary procedural steps to complete the formal procedures for the discontinuance and sale of the road, including the execution of all relevant documentation.

6. Financial and resource implications

Council's Discontinuance of Roads and Reserves Policy outlines the methodology to be applied in determining the purchase price of discontinued roads. In relation to this discontinuance proposal, the following Policy Statement 3, Principle 2 of the policy has been utilised to determine the proposed sale price:

“When a property owner can demonstrate exclusive occupation of the road or reserve for 15 years or longer, the purchase price may be discounted for the specific circumstance of the current market value. A Council report seeking authorisation for the price negotiated will occur. Evidence of exclusive occupation will include the signing of a statutory declaration together with any other supporting documentation. Council’s GIS aerial photograph records will also provide information.

Where the purchase price of a parcel of land is substantially higher than the cost of an adjoining owner acquiring the land via an adverse possession claim (where adverse possession claim criteria are satisfied) the purchase price may be discounted to an amount equal to adverse possession costs (estimated at \$9,000 as at the date of adoption of this policy). This amount will be reviewed annually to ensure it reflects the current costs of an adverse possession claim.”

See confidential **Attachment 4** for details of the proposed purchase price of the land.

7. Governance issues

Officers involved in the preparation of this report have no general or material conflict of interest.

The list of prescribed human rights contained in the Victorian Charter of Human Rights and Responsibilities has been reviewed in accordance with Council’s Human Rights Compatibility Assessment Tool and it is considered the proposed actions contained in this report present no breaches of, or infringements upon, those prescribed rights.

8. Social and environmental issues

While 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

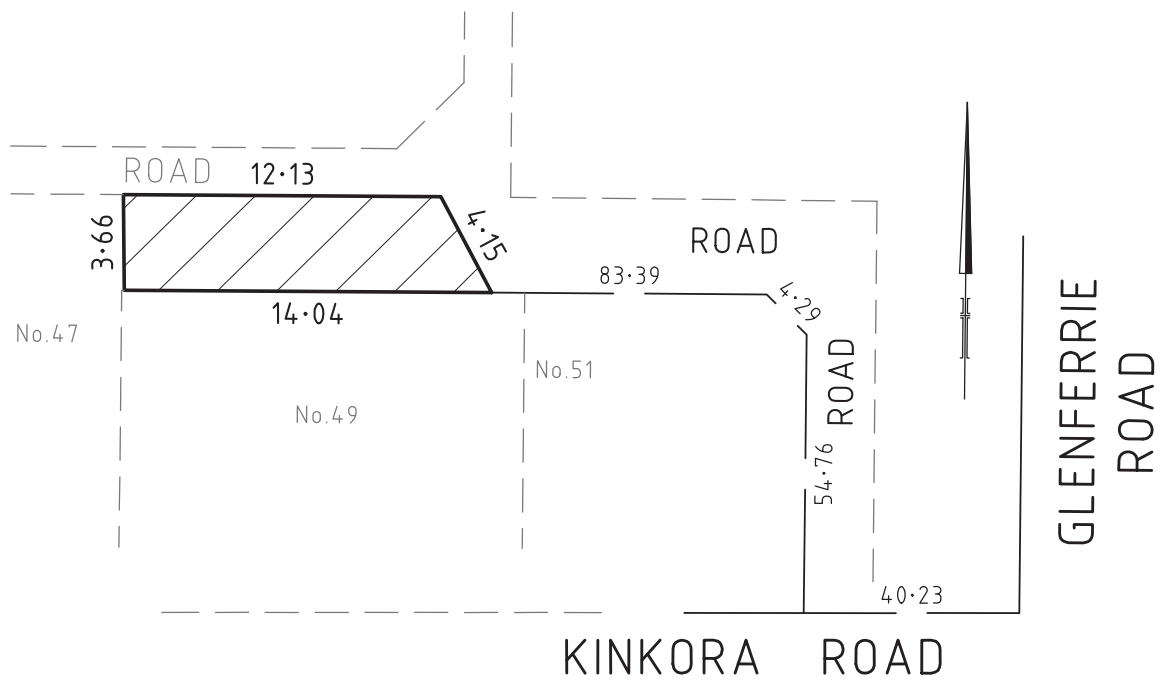
Council’s intended course of action has been reviewed from a legislative compliance perspective by Council’s consultants, Macquarie Local Government Lawyers and no issues have been identified.

10. Conclusion

It is considered by officers the section of road at the rear of 49 Kinkora Road, Hawthorn, as shown hatched in **Attachment 1**, is no longer reasonably required as a road for public use. Therefore, it is considered appropriate procedures be commenced for its discontinuance and sale to the adjoining owners in accordance with Council’s Discontinuance of Roads and Reserves Policy. Progressing the proposal will formalise the occupation of the land by the adjoining property owners which has prevailed for many years.

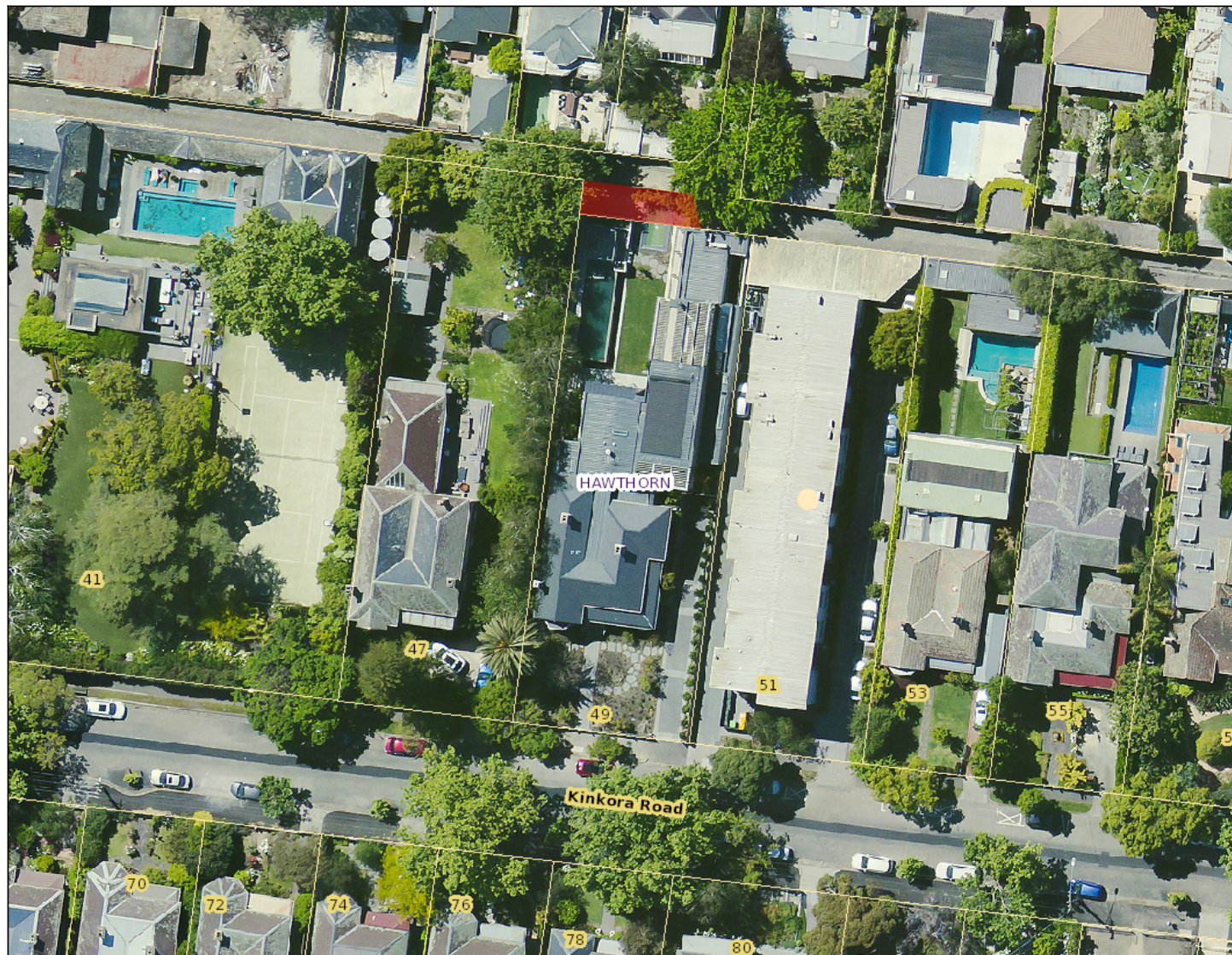
Manager: Callista Clarke, Acting Chief Financial Officer

Report officer: John Lorkin, Coordinator Revenue and Property Services



TITLE PLAN		EDITION 1	TP969120W	
<div>LOCATION OF LAND</div> <div>PARISHBOROONDARA</div> <div>TOWNSHIP-</div> <div>SECTION-</div> <div>CROWN ALLOTMENT-</div> <div>CROWN PORTION37 (PART)</div> <div>LAST PLAN REFERENCELP2724</div> <div>DEPTH LIMITATIONDOES NOT APPLY</div> <div>TITLE REFERENCEVOL.11558 FOL.253</div> <div>MGA CO-ORDINATES<div>E327 030</div><div>N5 812 735</div><div>ZONE55</div><div>(APPROX. CENTRE OF LAND IN PLAN)</div></div>		<div>WARNING</div> <div>THIS PLAN REPRESENTS AN EXPECTED DIVISION OF LAND.</div> <div>ANY ONE LOT MAY NOT HAVE BEEN CREATED.</div> <div>CHECK THE LOT/PLAN INDEX FOR CURRENT INFORMATION.</div>		
		<div>NOTATIONS</div> <div>THIS PLAN IS NOT BASED ON SURVEY.</div>		
EASEMENT INFORMATION				
<div>LEGEND</div> <div>E- ENCUMBERING EASEMENT OR CONDITION IN CROWN GRANT IN THE NATURE OF AN EASEMENT OR OTHER ENCUMBRANCE</div> <div>A- APPURTENANT EASEMENT R- ENCUMBERING EASEMENT (ROAD)</div>				
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED/IN FAVOUR OF
-	-	-	-	-

SCALE 1:200	<div>0246810</div> <div>LENGTHS ARE IN METRES</div>	LICENSED SURVEYOR ANDREW CLINTON SMITH	FILE NO : LGD
SHEET 1 OF 1 SHEET ORIGINAL SHEET SIZE: A3		SIGNATURE DATE / /	DEALING CODE : LGA
<div>BARKER MONAHAN</div> <div>A DIVISION OF TERRAIN CONSULTING GROUP PTY LTD</div> <div>SURVEYORS, DEVELOPMENT AND</div> <div>LOCAL GOVERNMENT CONSULTANTS</div> <div>581 GILBERT ROAD, PRESTON 3072</div> <div>P.O. BOX 2546 REGENT WEST 3072</div> <div>TELEPHONE 9478 6133 FAX 9470 5189</div> <div>EMAIL: survey@barkermonahan.com.au</div>		REF. 20415BM	VERSION 01
		COMPUTER FILE: 20415 TP969120W.DWG DATE: 31/08/2020	



Map Produced: 26 March, 2021 15:18:00

KEY

Multi Assessment

Multi Lot

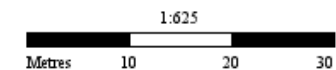
Road Names - Major

Road Names - Minor

Property

Roads - Major

Suburbs



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