

7.7 Rear of 2 to 18 Glencairn Avenue and 235 to 253 Highfield Road, adjoining 1233 Toorak Road, Camberwell - Proposed discontinuance and sale of drainage reserve

Abstract

This report is to consider commencement of the statutory procedures to discontinue and sell the 1.83m wide drainage reserve at the rear of 2 to 18 Glencairn Avenue and 235 to 253 Highfield Road, adjoining 1233 Toorak Road, Camberwell. It is considered by officers the section of reserve is no longer required for the purpose for which it was reserved and has been enclosed within the adjoining properties 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. Adjoining properties have also been notified of the proposal and no objections to the proposal have been received.

It will be necessary for Council to undertake the following:

- Procedures under section 189 of the *Local Government Act 1989* (Vic) for the sale of the land from the discontinued reserve.
- Procedures under part 4 of the *Planning & Environment Act 1987* (Vic) and section 24A of the *Subdivision Act 1988* (Vic) to vest the reserve in Council, remove (discontinue) reserve status from the land and subdivide the land into various lots. These procedures will require Council to prepare a plan of subdivision. Once the plan of subdivision has been certified by Council and registered at Land Use Victoria, separate titles will be issued for each lot.

The proposed commencement of the statutory procedures under section 189 of the *Local Government Act 1989* (Vic) requires Council to give public notice of its intention to sell the land from the reserve 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 private commercial information, being information provided by a business or commercial undertaking that if released, would unreasonably expose the business or commercial undertaking to disadvantage. 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 attachment 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 189 of the *Local Government Act 1989* (Vic) ("the Act"), resolves to:

1. Commence the statutory procedures to sell the land from the 1.83m wide drainage reserve at the rear of 2 to 18 Glencairn Avenue and 235 to 253 Highfield Road, adjoining 1233 Toorak Road, Camberwell, shown hatched in **Attachment 1** and as annexed to the minutes, to the owners of the adjoining properties by private treaty in accordance with Council policy.
2. Give public notice of the proposed sale of the land from the reserve in the appropriate newspaper and on Council's website, under sections 189 and 223 of the Act, and for such notice to state Council proposes to sell the land from the reserve to the owners of the adjoining properties by private treaty in accordance with Council policy.
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 sale of the land to the owners of the adjoining properties, including the execution of all relevant documentation, in accordance with the purchase prices detailed in **Attachment 4** of this report and annexed to the confidential minutes.
4. Note procedures will be undertaken pursuant to part 4 of the *Planning and Environment Act 1987* (Vic) and section 24A of the *Subdivision Act 1988* (Vic) to vest the reserve in Council, remove (discontinue) reserve status from the land and subdivide the land.
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 the 1.83m wide drainage reserve at the rear of 2 to 18 Glencairn Avenue and 235 to 253 Highfield Road, adjoining 1233 Toorak Road, Camberwell, shown hatched in **Attachment 1** and to consider the 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 an adjoining property owner for the discontinuance and sale of the 1.83m wide drainage reserve at the rear of 2 to 18 Glencairn Avenue and 235 to 253 Highfield Road, adjoining 1233 Toorak Road, Camberwell, as shown hatched in **Attachment 1**.

The reserve remains in the name of the original subdivider.

Part of the reserve at the rear of 6 Glencairn Avenue, Camberwell has previously been acquired by the owners of the property via adverse possession.

The reserve has been enclosed within the adjoining properties for in excess of 15 years and is considered by officers to be no longer required for the purpose for which it was reserved.

See **Attachment 2** for the proposed Plan of Subdivision PS842129Y showing the proposed allocation of the land if the reserve is discontinued.

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

4. Outline of key issues/options

The section of drainage reserve is considered by officers to be no longer required for the purpose for which it was reserved and has been enclosed within the adjoining properties for in excess of 15 years.

Reserves of this nature no longer need to be 'set aside' as a separate parcel of land. The purpose of the reserve can be equally achieved if the land is subdivided and transferred into private ownership. The underground assets can be adequately protected with an appropriate easement.

If Council decides to proceed with the proposed discontinuance and sale of the reserve, it will have to undertake the following:

- Procedures under section 189 of the *Local Government Act 1989* for the sale of the land from the discontinued reserve.
- Procedures under part 4 of the *Planning & Environment Act 1987* and section 24A of the *Subdivision Act 1988* (Vic) to vest the reserve in Council, remove (discontinue) reserve status from the land and subdivide the land into various lots. These procedures will require Council to prepare a plan of subdivision. Once the plan of subdivision has been certified by Council and registered at Land Use Victoria, separate titles will be issued for each lot.

5. Consultation/communication

A survey of adjoining property owners has been completed with general agreement to the proposal reached.

The following service authorities have been consulted:

- Yarra Valley Water
- Melbourne Water
- Telstra
- Multinet Gas
- CitiPower
- Optus
- NBN
- SPI PowerNet (major electricity transmission lines)

No objections have been received. Yarra Valley Water has a sewer within part of the land. Accordingly, an easement will be created in favour of Yarra Valley Water in the plan of subdivision should the proposal proceed.

The following Council departments have been consulted:

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

No objections have been received. Council has a drain within the length of the land. Accordingly, an easement will be created in favour of Council in the plan of subdivision should the proposal proceed.

The statutory procedures for the proposed sale of the land require Council to give public notice of its intention to sell the land from the reserve 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 or not to sell the land.

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 sale of the land, 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 and reserves. 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 drainage reserve at the rear of 2 to 18 Glencairn Avenue and 235 to 253 Highfield Road, adjoining 1233 Toorak Road, Camberwell, as shown hatched in **Attachment 1**, is no longer reasonably required for the purpose for which it was reserved. Therefore, it is considered appropriate procedures be commenced for its discontinuance and sale to the adjoining property 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



GLENCAIRN AVENUE

No.22		No.233	
		No.235	
No.18		No.237	
No.16		No.239	
No.14		No.241	
No.12		No.243	
No.10		No.245	
No.8		No.247	
No.6		No.249	
No.4		No.251	
No.2		No.253	
No.1221	No.1225	No.1233	No.1237

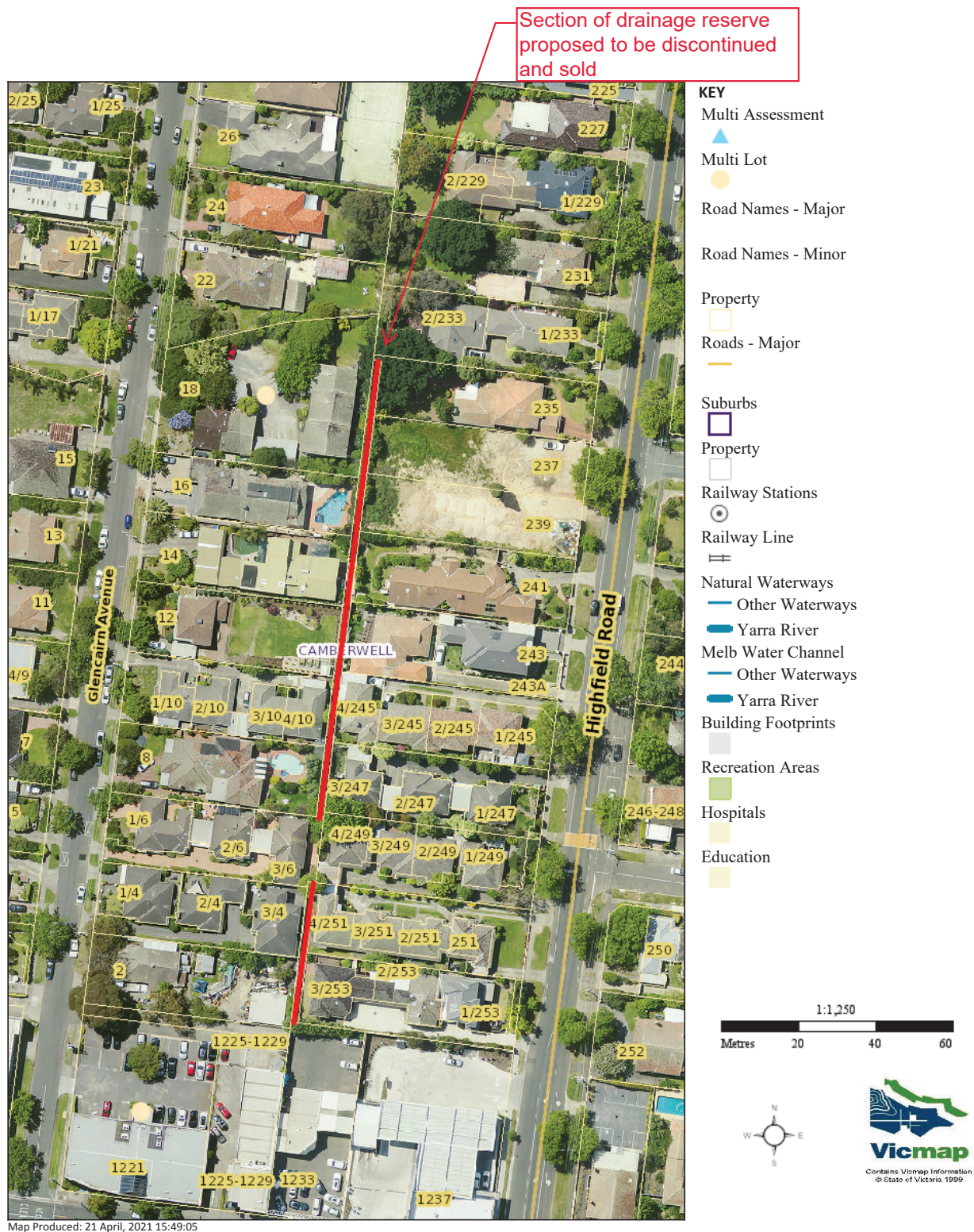
TOORAK ROAD

HIGHFIELD ROAD

PLAN UNDER SECTION 24A OF THE SUBDIVISION ACT 1988			EDITION 1		PS842129Y	
LOCATION OF LAND PARISH: BOROONDARA CROWN PORTION: 148 (PART) TITLE REFERENCE: VOL. 10264 FOL. 078 LAST PLAN REFERENCE: TP817035W, LOT 1 POSTAL ADDRESS: HIGHFIELD ROAD, (at time of subdivision) CAMBERWELL, 3124. MGA CO-ORDINATES E: 331 220 ZONE: 55 (at approx centre of land N: 5809 370 GDA2020 in plan)			BOROONDARA CITY COUNCIL			
VESTING OF ROADS AND/OR RESERVES			NOTATIONS			
IDENTIFIER		COUNCIL/BODY/PERSON		PURPOSE OF THE PLAN: (i) TO VEST IN THE BOROONDARA CITY COUNCIL THOSE PARTS OF LOT 1 ON TP817035W (PART OF DRAINAGE RESERVE ON LP6895) AS SHOWN AS LOTS 1-9 (BOTH INCLUSIVE) ON THIS PLAN. (ii) REMOVAL BY THE BOROONDARA CITY COUNCIL OF THE RESERVATION FROM THOSE PARTS OF LOT 1 ON TP817035W (PART OF DRAINAGE RESERVE ON LP6895). (iii) REMOVAL BY THE BOROONDARA CITY COUNCIL OF ALL DRAINAGE EASEMENTS SET OUT IN LP6895 FROM THE LAND IN THIS PLAN. GROUNDS FOR VESTING AND REMOVAL: AS DIRECTED BY BOROONDARA CITY COUNCIL PLANNING PERMIT No.		
NIL		NIL				
NOTATIONS						
DEPTH LIMITATION DOES NOT APPLY						
SURVEY: This plan is based on survey STAGING This is not a staged subdivision. Planning Permit No. This survey has been connected to permanent marks No(s). 288 In Proclaimed Survey Area No. ---						
EASEMENT INFORMATION						
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)						
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of		
E-1	DRAINAGE SEWERAGE	SEE DIAG.	THIS PLAN THIS PLAN	BOROONDARA CITY COUNCIL YARRA VALLEY WATER		
E-2	SEWERAGE	SEE DIAG.	THIS PLAN	YARRA VALLEY WATER		
Millar Merrigan Land Development Consultants M(03) 8720 9500 R (03) 5134 8611 www.millarmerrigan.com.au survey@millarmerrigan.com.au SAI GLOBAL Quality ISO 9001			SURVEYOR'S REF:25144S1 11/05/2020		ORIGINAL SHEET SIZE: A3	SHEET 1 OF 3
			LICENSED SURVEYOR GREG O'NEILL This is not a digitally signed plan.		VERSION NO. 1	







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