

## 7.8 Adjoining 4 and 6 Faircroft Avenue and 23 Parkin Street, Glen Iris - Proposed discontinuance and sale of drainage and sewerage reserve

### Abstract

This report is to consider commencement of the statutory procedures to discontinue and sell the 4.57m wide drainage and sewerage reserve adjoining 4 and 6 Faircroft Avenue and 23 Parkin Street, Glen Iris. 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 4.57m wide drainage and sewerage reserve adjoining 4 and 6 Faircroft Avenue and 23 Parkin Street, Glen Iris, 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.

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**Responsible director: Phillip Storer, Chief Executive Officer**

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## 1. Purpose

This report is to consider commencement of the statutory procedures for the discontinuance and sale of the 4.57m wide drainage and sewerage reserve adjoining 4 and 6 Faircroft Avenue and 23 Parkin Street, Glen Iris, 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 the owner of the adjoining property at 6 Faircroft Avenue, Glen Iris for the discontinuance and sale of the drainage and sewerage reserve adjoining 4 and 6 Faircroft Avenue and 23 Parkin Street, Glen Iris, as shown hatched in **Attachment 1**.

The section of the reserve remains in the name of the original subdivider.

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 PS829348L 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 and sewerage 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* (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.

## 5. Consultation/communication

A survey of adjoining property owners has been completed with general agreement to the proposal and no objections.

The following service authorities have been consulted:

- Yarra Valley Water
- Melbourne Water
- Telstra
- Multinet Gas (gas)
- Zinfra Group (electricity)
- Optus
- SPI PowerNet (major electricity transmission lines)

No objections have been received. Yarra Valley Water has a sewer within the land and Melbourne Water has a drain within the land. Accordingly, easements will be created in favour of Yarra Valley Water and Melbourne 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
- Environmental Sustainability and Open Spaces

No objections have been received. Council has identified it may need to install a drain within the land in the future. 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

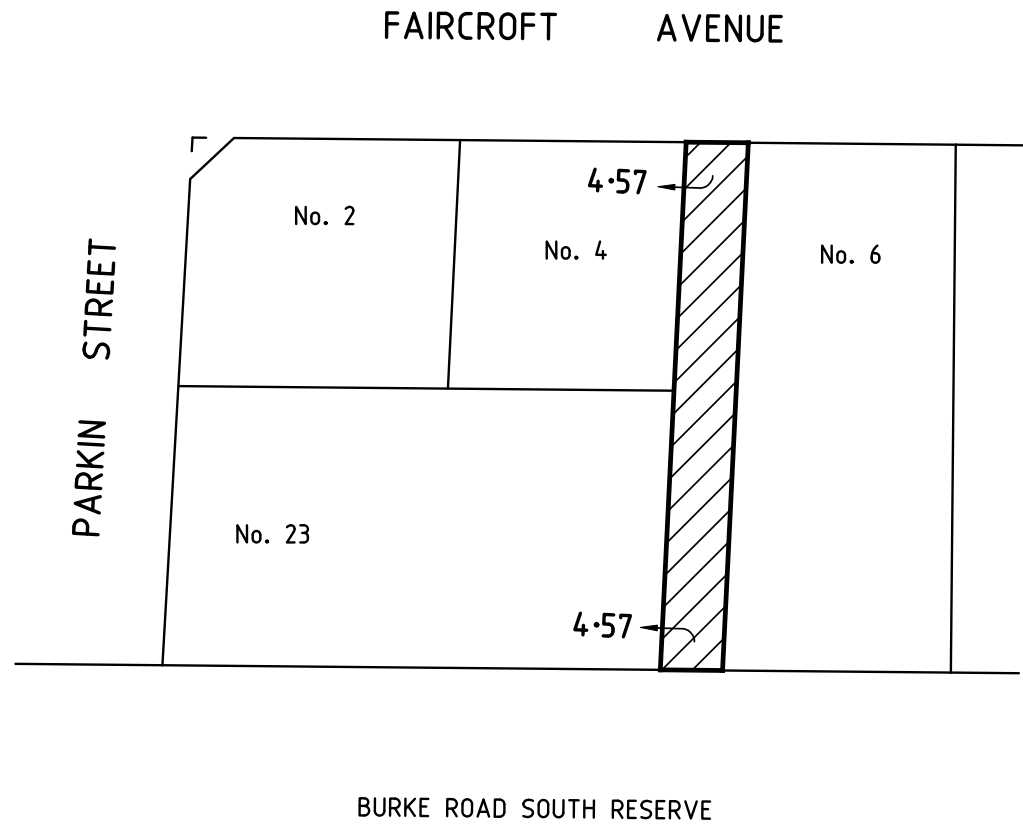
Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants Macquarie Local Government Lawyers and no issues have been identified.

## 10. Conclusion

It is considered by officers the section of drainage and sewerage reserve adjoining 4 and 6 Faircroft Avenue and 23 Parkin Street, Glen Iris, 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

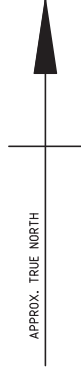
**Report officer:** John Lorkin, Coordinator Revenue & Property Services



<b>PLAN UNDER SECTION 24A OF THE SUBDIVISION ACT 1988</b>		EDITION 1	<b>PS829348L</b>	
<b>LOCATION OF LAND</b> PARISH: BOROONDARA  CROWN ALLOTMENT: 108 (PART)  TITLE REFERENCE: VOL.5069 FOL.702  LAST PLAN REFERENCE: LP11283, RESERVE No.2  POSTAL ADDRESS: 6 FAIRCROFT AVENUE (at time of subdivision) GLEN IRIS, 3146  MGA CO-ORDINATES E: 328 450 ZONE: 55 (at approx centre of land N: 5809 270 GDA 94 in plan)		BOROONDARA CITY COUNCIL		
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>		
IDENTIFIER	COUNCIL/BODY/PERSON	<b>PURPOSE OF PLAN</b>		
NIL	NIL	(i) TO VEST RESERVE No.2 (DRAINAGE & SEWERAGE) ON LP11283 SHOWN AS LOTS 1, 2 & 3 HEREON IN THE BOROONDARA CITY COUNCIL. (ii) REMOVAL BY THE BOROONDARA CITY COUNCIL OF THE RESERVATION FROM RESERVE No. 2 (DRAINAGE & SEWERAGE) ON LP11283 SHOWN AS LOTS 1, 2 & 3 HEREON. (iii) TO REMOVE THE SECTION 98 DRAINAGE & SEWERAGE EASEMENTS FROM RESERVE No. 2 (DRAINAGE AND SEWERAGE) SHOWN AS LOTS 1, 2 & 3 HEREON.		
<b>NOTATIONS</b>		<b>GROUPS FOR VESTING AND REMOVAL</b>		
DEPTH LIMITATION DOES NOT APPLY		BOROONDARA CITY COUNCIL PLANNING PERMIT No.		
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).  In Proclaimed Survey Area No. ---				
<b>EASEMENT INFORMATION</b>				
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 DRAINAGE SEWERAGE	SEE DIAG.	THIS PLAN THIS PLAN THIS PLAN	BOROONDARA CITY COUNCIL MELBOURNE WATER YARRA VALLEY WATER
<b>Millar   Merrigan</b> 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: 23651S1 14/11/2018  LICENSED SURVEYOR GREG O'NEILL VERSION NO. 1 This is not a digitally signed plan.		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 2

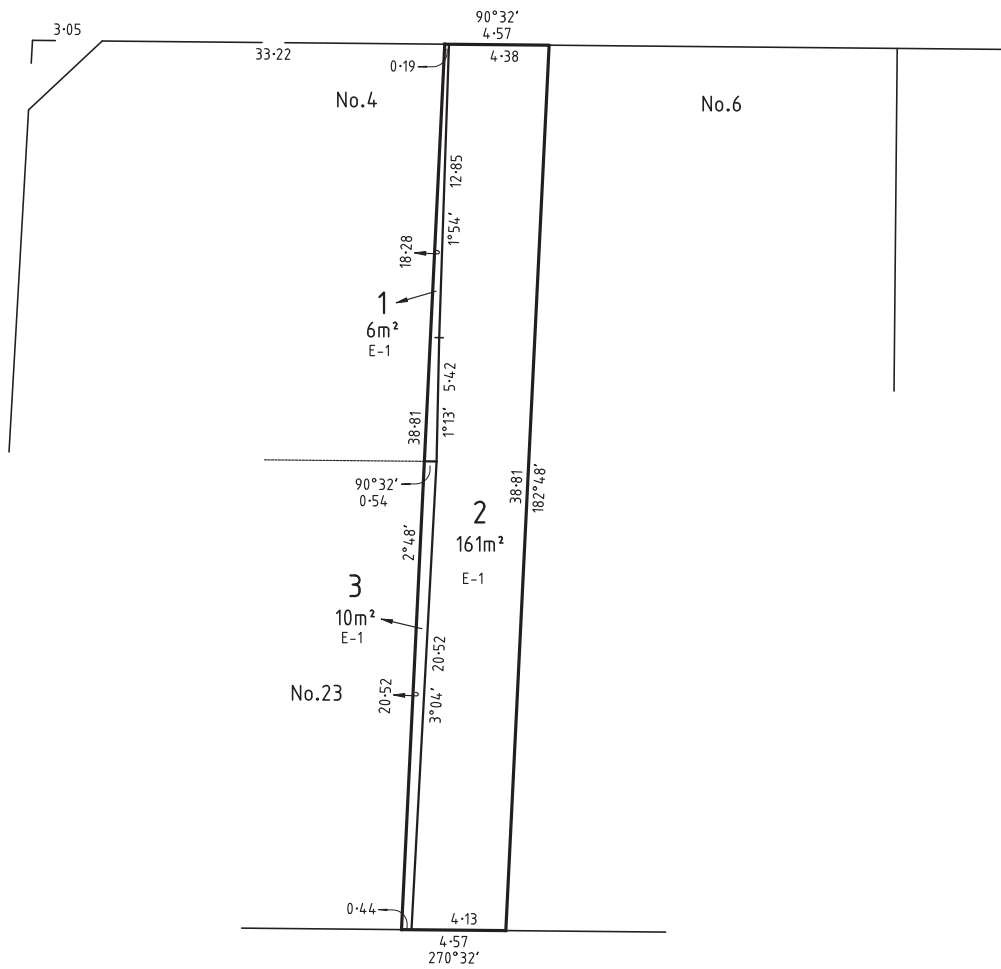


PS829348L



FAIRCROFT AVENUE

PARKIN STREET



SCALE 1:200	2 0 2 4 6 8 LENGTHS ARE IN METRES
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**Millar | Merrigan**

Land Development Consultants

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Regional 156 Commercial Road, Morwell 3840  
Mail PO Box 247 Croydon, Victoria 3136

SURVEYOR'S REF: 23651S1 14/11/2018

ORIGINAL SHEET  
SIZE: A3

SHEET 2

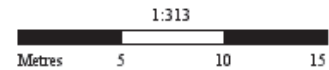
LICENSED SURVEYOR  
GREG O'NEILL VERSION NO. 1

This is not a digitally signed plan.

Section of drainage and sewerage reserve proposed to be discontinued and sold



- KEY**
- Multi Assessment
  - Multi Lot
  - Road Names - Major
  - Road Names - Minor
  - Property
  - Roads - Major
  - Suburbs



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