

## 3.2 Adjoining 9 & 11 Weybridge Street, Surrey Hills - Proposed sale of land from a previously discontinued right of way

### Abstract

This report is to consider commencement of the statutory procedures to sell the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills. The land is currently unoccupied and unused and is considered by officers to be suitable for sale to the adjoining property owners.

In 1999 Council resolved to discontinue and sell the 3.66m wide road at the rear of 21 to 31 Scheele Street and 24 to 32 Langford Street and adjoining 9 and 11 Weybridge Street, Surrey Hills, shown hatched on **Attachment 1**. While the majority of the land from the former road has been sold, the section between 9 and 11 Weybridge Street, shown hatched in **Attachment 2**, has not yet been sold. Council took title to the land in 2008.

Recent consultation undertaken with both of the adjoining owners has resulted in both of the owners expressing an interest in acquiring the land. However, while the owner of 9 Weybridge Street favours a longitudinal division of the land, the owner of 11 Weybridge Street favours a latitudinal division of the land.

Council's Strategic and Statutory Planning Department was consulted in regard to its requirements/preference to the division of land having regard to the presence of Council's drainage assets located in the land.

As part of the consultation, the Strategic and Statutory Planning department initially advised preference for a latitudinal division, as shown in the draft Plan of Subdivision PS848222C (version 1), in **Attachment 4**. This would provide greater access to the Council drain and Council pit in the land and reduce the amount of fence that is immediately adjacent to the existing Council drain reducing the chance of damage to the drain from the fence placement.

Further investigation was undertaken by the department resulting in advice supporting the option of a longitudinal division of the land. Council officers identified there is minimal risk to Council's drainage assets as the drain is located closer to the western boundary of the land than first thought. There will be sufficient clearance from the edge of the drainage pipe and edge of drainage pit to the centreline of the land. A longitudinal division would also be more conducive to the proper planning and development of the area and the land would be split in a fair and equitable manner to both adjoining properties as both will have an equal share of frontage and depth.

Commencement of the statutory procedures will provide owners, and any other interested parties, an opportunity to express their views on the proposal to Council prior to it making a decision on the proposed sale of the land, including its division/allocation.

## Officers' recommendation

That the Services Delegated Committee, acting under section 114 of the *Local Government Act 2020*, resolve to:

1. Commence the statutory procedures to sell the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, shown hatched in **Attachment 2**, and as annexed to the minutes, to the adjoining property owners by private treaty in accordance with Council policy.
2. Give notice of its intention to sell the land on Council's internet site, and in such notice state that Council proposes to sell the land to the abutting owners by private treaty, on a longitudinal basis, as shown in draft Plan of Subdivision PS848222C in **Attachment 3**, and as annexed to the minutes.
3. As part of its community engagement process, invite both written and verbal submissions on the proposed sale and deal with any submissions received in accordance with the principles set out in section 223 of the *Local Government Act 1989*.
4. If any submissions are received following the publication of the notice of intention to sell the land, note that a further report will be presented to Council to enable consideration of the submissions by Council and for a decision on the proposal.
5. If no submissions are received following the publication of the notice of intention to sell the land, 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.
6. Authorise the Chief Executive Officer, or such other person as the Chief Executive Officer approves, to sign all necessary documentation for the sale of the land to the adjoining property owners in accordance with the purchase price detailed in section 6 of this report.

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

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## 1. Purpose

This report is to consider commencement of the statutory procedures to sell the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, shown hatched in **Attachment 2**.

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

This matter is addressed under Council's *Discontinuance of Roads and Reserves Policy 2015*.

This report is consistent with the Boroondara Community Plan 2021-31 (BCP), incorporating the 10-year Community Vision, Council Plan 2021–25 and Municipal Public Health and Wellbeing Plan 2021–25.

In particular strategy 7.1 “*Decision-making is transparent and accountable through open governance processes with timely communication and reporting*”.

It also supports Strategic Objective 7 of the BCP, to “*Ensure decisions are financially and socially responsible through transparent and ethical processes*”.

## 3. Background

Council had received a request from one of the adjoining owners for the sale of the 3.66m wide section of previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, as shown hatched in **Attachment 2**.

The land is currently unoccupied and unused and is considered by officers to be suitable for sale to the adjoining property owners.

In 1999 Council resolved to discontinue and sell the 3.66m wide road at the rear of 21 to 31 Scheele Street and 24 to 32 Langford Street and adjoining 9 and 11 Weybridge Street, Surrey Hills, shown hatched in **Attachment 1**.

While the majority of the land from the former road had been sold following the discontinuance, the section between 9 and 11 Weybridge Street, Surrey Hills, shown hatched in **Attachment 2**, remains unsold.

Council took title to the land in 2008.

See **Attachment 5** for an aerial view.

## 4. Outline of key issues/options

The land is known as Lot 10 on Title Plan TP924930M and contained within Certificate of title Volume 11083 Folio 200. If the land is to be divided between the two abutting owners, a subdivision will be required in order to divide the land into 2 Lots.

In regard to the proposed allocation/division there are two options to be considered - a latitudinal division or a longitudinal division.

Council's Strategic and Statutory Planning Department was consulted in regard to its requirements/preference to the division of land having regard to the presence of Council's drainage assets located in the land.

As part of the consultation, the department initially advised preference for a latitudinal division, as shown in the draft Plan of Subdivision PS848222C (version 1), in **Attachment 4**, because this would:

- Provide greater access to the Council drain and Council pit in the land; and
- Reduce the amount of fence that is immediately adjacent to the existing Council drain reducing the chance of damage to the drain from the fence placement.

The owner of 11 Weybridge Street had expressed interest in acquiring Lot 1 on draft Plan of Subdivision PS848222C (version 1), in **Attachment 4**.

The owner of 9 Weybridge Street, however, is not in favour of the proposed division and strongly favours a longitudinal division of the land as being the appropriate option.

Further investigation was undertaken by the Strategic and Statutory Planning department and advised the option of a longitudinal division of land can be accommodated. Council officers identified there is minimal risk to Council's drainage assets as the drain is located closer to the western boundary of the land and will provide a clearance of:

- 1m from the edge of the drainage pipe to the centreline of the land; and
- 0.8m from the edge of a drainage pit in the land to the centreline of the land.

Furthermore, a longitudinal division is favoured by officers as:

- it would, in their opinion, be more conducive to the proper planning and development of the area;
- it places the stormwater pit servicing 11 Weybridge Street in the section of land allocated to that property, and
- the land would be split in a fair and equitable manner to both adjoining properties.

Both adjoining owners were notified of the proposed change in allocation to a longitudinal division.

While the owner of 9 Weybridge Street has expressed interest in acquiring Lot 1 on draft Plan of Subdivision PS848222C (version 2), in **Attachment 3**, the owner of 11 Weybridge Street has indicated a strong preference for acquiring the land allocated on the initial basis, i.e. Lot 1 on draft Plan of Subdivision PS848222C, in **Attachment 4**.

So, an impasse exists between the two owners in regard to the preferred division/allocation and intended acquisition.

Commencement of the statutory procedures will provide the two owners, and any other interested parties, an opportunity to express their views on the proposal to prior to Council making a decision on the proposed sale of the land including its division/allocation.

## 5. Consultation/communication

All necessary Service Authorities and Council Departments were consulted as part of the original discontinuance procedures in 1999. As part of those procedures easements were saved in favour of both Yarra Valley Water and Council to protect the Yarra Valley Water sewer and Council drain within the land.

The procedures under section 114 of the *Local Government Act 2020* require that Council publish a 'notice of its intention to sell the Land' on the Council's internet site and undertake a community engagement process in accordance with its community engagement policy.

Section 114 of the *Local Government Act 2020* does not require Council to publish a public notice in a newspaper circulated within the municipality nor provide for the lodgement of submissions to Council and the consideration of those submissions, pursuant to section 223 of the *Local Government Act 1989* (as still exists with road discontinuances).

Nevertheless, in order to provide a mechanism for feedback from interested parties as part of Council's community engagement process, it is recommended that Council invite both written and verbal submissions on the proposal and deal with any submissions received as if the process set out in section 223 of the *Local Government Act 1989* applies.

The notice of intention to sell the Land will therefore afford affected parties the right to lodge a written submission with Council. Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise with the proposal. In other words, the principles of section 223 of the *Local Government Act 1989* would be followed.

In addition to the notice on Council's internet site, all abutting property owners will be advised of the proposal in writing and informed of their right to make a submission.

If any submissions are received, a further report will be presented to a meeting 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 1 of the policy has been utilised to determine the proposed sale price:

**Principle 1**

*In order to assist with the discontinuance and disposal and subject to preliminary consultation demonstrating support for the discontinuance to proceed, Council will offer the land for purchase at the current market value, as determined by Council's contract valuers. The valuation under this Policy will reflect the additional value the subject parcel of land will add to the value of the existing property of the potential acquirer and will take into consideration the market value of land within the immediate locale having regard to the location of the subject land and characteristics including whether the land:*

- *Is capable of being developed in its own right given the small land area;*
- *Is only marketable to the adjoining owners;*
- *Is long and narrow, and/or;*
- *Is encumbered with an easement.*

The purchase price of the land shown as Lots 1 and 2 on draft Plan of Subdivision PS848222C Version 2 in **Attachment 3**, under Principle 1 of Council's Discontinuance of Roads and Reserves Policy (market value) is:

Lot 1 (73.5m<sup>2</sup>) - \$97,700.00 (incl. GST)

Lot 2 (73.5m<sup>2</sup>) - \$97,700.00 (incl. GST)

**7. Governance issues**

Officers involved in the preparation of this report have no 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 that the proposed actions contained in this report represent 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.

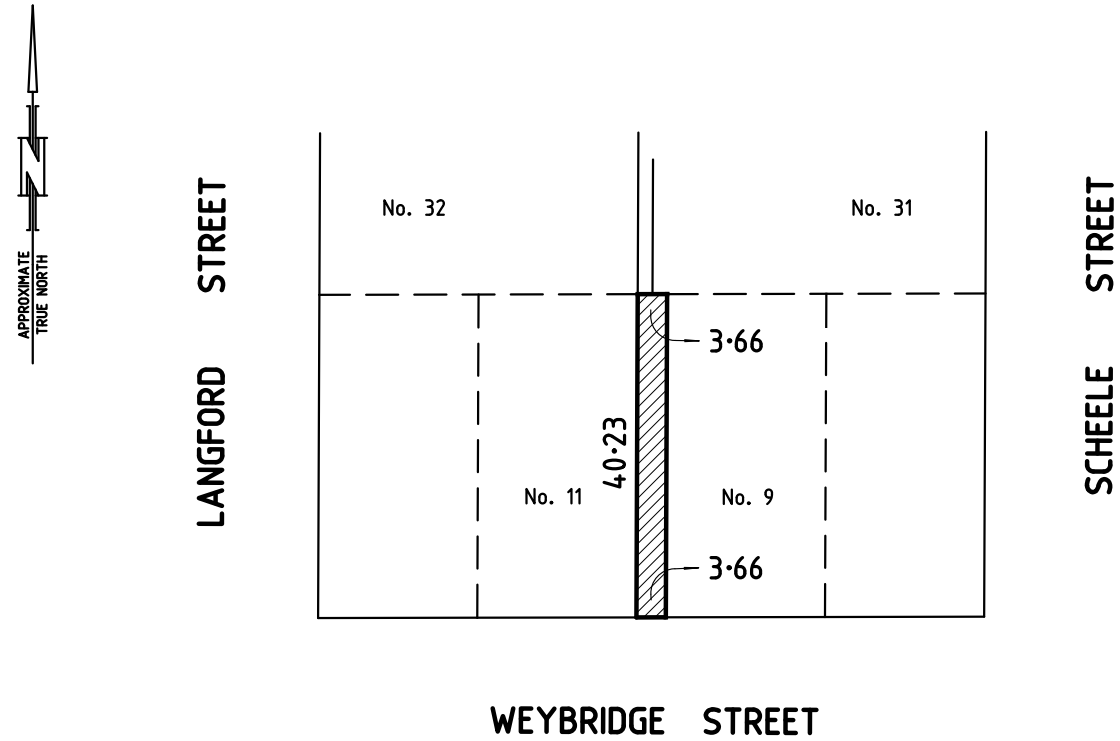
**10. Conclusion**

It is considered by officers that the section of land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, is suitable for sale to the adjoining owners and as such it is appropriate that procedures be commenced for the sale of the land to the adjoining owners in accordance with Council Policy.

**Manager:** Callista Clarke, Acting Chief Financial Officer

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







PLAN OF SUBDIVISION				EDITION 1		PS848222C	
<div>LOCATION OF LAND</div> <div>PARISH: BOROONDARA</div> <div>TOWNSHIP: _____</div> <div>SECTION: _____</div> <div>CROWN ALLOTMENT: _____</div> <div>CROWN PORTION: _____</div> <div>ELGAR'S CROWN SPECIAL SURVEY (PART)</div> <div>TITLE REFERENCE: VOL. 11083 FOL. 200</div> <div>LAST PLAN REFERENCE: TP924930M, LOT 10</div> <div>POSTAL ADDRESS: WEYBRIDGE STREET, (at time of subdivision) SURREY HILLS. 3127.</div> <div>MGA CO-ORDINATES: E 332 500 (of approx. centre of land in plan) N 5812 650</div> <div>ZONE: 55</div>				<div>COUNCIL NAME: BOROONDARA CITY COUNCIL</div>			
VESTING OF ROADS AND/OR RESERVES				NOTATIONS			
IDENTIFIER		COUNCIL/BODY/PERSON		<div>PRELIMINARY COPY ONLY</div> <div>To be Superseded by Final Plan</div>			
NIL		NIL					
NOTATIONS							
DEPTH LIMITATION: DOES NOT APPLY							
<div>STAGING</div> <div>This is not a staged subdivision Planning Permit No.</div>							
<div>SURVEY</div> <div>THIS PLAN IS BASED ON SURVEY</div> <div>THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No.(s) IN PROCLAIMED SURVEY AREA No.</div>							
EASEMENT INFORMATION							
LEGEND: E - ENCUMBERING EASEMENT A - APPURTENANT EASEMENT R - ENCUMBERING EASEMENT (ROAD)							
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of			
E-1	AS PROVIDED FOR IN SECTION 207C OF THE L.G.A. 1989.	SEE DIAG.	SECTION 207C OF THE L.G.A. 1989.	BOROONDARA CITY COUNCIL & YARRA VALLEY WATER			
<div>Millar   Merrigan</div> <div>(03) 8720 9500 R (03) 5134 8611 www.millarmerrigan.com.au survey@millarmerrigan.com.au SAI GLOBAL Quality ISO 9001</div> <div>Land Development Consultants Millar &amp; Merrigan Pty Ltd ACN 005 541 668 Metro 2/126 Merrindale Drive, Croydon 3136 Regional 156 Commercial Road, Morwell 3840 Mail PO Box 247 Croydon, Victoria 3136</div>		SURVEYORS REF: 26854S1		14/5/2021	ORIGINAL SHEET SIZE A3	SHEET 1 OF 2 SHEETS	
		LICENSED SURVEYOR ANDREW JAMES SMITH, VERSION 2 THIS IS NOT A DIGITALLY SIGNED PLAN					

PLAN OF SUBDIVISION

PS848222C

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

SCALE  
1:250

2.5 0 2.5 5 7.5 10  
LENGTHS ARE IN METRES

SURVEYORS REF: 26854S1

14/5/2021

ORIGINAL SHEET  
SIZE A3

SHEET 2

LICENSED SURVEYOR

ANDREW JAMES SMITH, VERSION 2

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PS848222C

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SCALE 1:250	2.5 0 2.5 5 7.5 10 LENGTHS ARE IN METRES
SURVEYORS REF: 26854S1 10/12/2020	
LICENSED SURVEYOR ANDREW JAMES SMITH, VERSION 1 THIS IS NOT A DIGITALLY SIGNED PLAN	

ORIGINAL SHEET SIZE A3	SHEET 2
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