

### 3 Presentation of officer reports

#### 3.1 Adjoining 9 and 11 Weybridge Street, Surrey Hills - Proposed sale of land from a previously discontinued right of way (road)

##### Executive Summary

###### Purpose

This report is to consider the completion of the statutory procedures for the sale of the land from the previously discontinued 3.66m wide road adjoining 9 and 11 Weybridge Street, Surrey Hills, including the consideration of two written and any verbal submissions received in respect to the proposal.

###### Background

Council received a request from one of the adjoining property owners for the sale of the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, as shown hatched in **Attachment 1**.

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 2**. While the majority of the land from the former road has been sold, the section between 9 and 11 Weybridge Street, Surrey Hills, remains unsold. Council took title to the land in 2008.

Council at its meeting held on 15 November 2021, resolved to commence the statutory procedures to sell the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, as shown hatched in **Attachment 1**, to the adjoining property owners in accordance with Council's policy, on a longitudinal basis as shown in draft Plan of Subdivision PS848222C (version 2), shown in **Attachment 3**.

Pursuant to the provisions of section 114 of the *Local Government Act 2020*, a notice advising of Council's intentions was published in The Age newspaper and on Council's website on 24 November 2021.

The notice also stated as part of its community engagement process Council is inviting submissions on the proposal and any submissions received would be considered by Council in accordance with the principles of section 223 of the *Local Government Act 1989*.

###### Key Issues

Written submissions have been received from both adjoining property owners at 9 and 11 Weybridge Street, Surrey Hills. Both submitters have requested to be heard in support of their submissions.

One submitter is strongly in favour of the proposed allocation and division of the land on a longitudinal basis while the other is strongly opposed to the proposed allocation and division and favours a latitudinal division of the land.

Copies of the submissions have been circulated to Councillors separately in confidential **Attachment 7**.

### Next Steps

The statutory procedures require Council to hear the submitters and consider their submissions and decide on whether to sell the land, part of the land or not to sell the land and also resolve upon the division and allocation of the land.

Once Council has reached a decision, it is required to notify the submitters of its decision and the reasons for it reaching its decision.

### Confidentiality

Confidential information is contained in **Attachment 7**, as circulated in the confidential section of the agenda attachments, in accordance with Section 66(2)(a) and the definitions of 'confidential information' in Section 3(1) of the *Local Government Act 2020*. The information relates to personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

The 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 the Services Delegated Committee, acting under section 114 of the *Local Government Act 2020*, and having considered the written and any verbal submissions received in accordance with the principles of section 223 of the *Local Government Act 1989* to the proposed sale of the land from the previously discontinued 3.66m wide road adjoining 9 and 11 Weybridge Street, Surrey Hills, shown hatched in **Attachment 1**, resolve to:

1. Direct the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, shown hatched in **Attachment 1**, and as annexed to the minutes, be sold to the adjoining property owners by private treaty in accordance with Council policy.
2. Dispose of the subject land by dividing the land on a longitudinal basis as shown in draft Plan of Subdivision PS848222C (version 2) in **Attachment 3**, and as annexed to the minutes.
3. Authorise the Chief Executive Officer, or any such person the Chief Executive Officer approves for the purpose of giving effect to this resolution, to act on behalf of Council relating to the sale of the land from the previously discontinued road to the adjoining property owners.
4. Advise the persons who lodged submissions in relation to the proposal of Council's decision and the reasons for the decision.

5. Record the following reasons for the decision to sell the land in the manner favoured by Council:
- (i) A longitudinal division would be more conducive to the proper planning and development of the area.
  - (ii) The division would produce a consistent street frontage width ensuring a subdivision pattern in keeping with the preferred neighbourhood character.
  - (iii) The division would ensure the detached nature from the side boundaries of the existing housing is maintained, which from a streetscape perspective is the preferred urban design outcome.
  - (iv) The division would facilitate the removal of the existing vehicular crossover and reinstatement of the nature strip resulting in the provision of additional on street parking for local residents.
  - (v) The division allows the stormwater from both the adjoining properties to continue to drain as it is now with no changes needed.
  - (vi) The division poses a minimal risk to Council's drainage assets located in the land as the drain is located closer to the western boundary of the land and will provide a clearance of:
  - (vii)
    - 1m from the edge of the drainage pipe to the centreline of the land; and
    - 0.8m from the edge of the stormwater pit servicing 11 Weybridge Street to the centreline of the land.

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

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## 1. Purpose

This report is to consider the completion of the statutory procedures for the sale of the land from the previously discontinued 3.66m wide road adjoining 9 and 11 Weybridge Street, Surrey Hills, including the consideration of two written and any verbal submissions received in respect to the proposal.

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

This matter is addressed under Council's *Discontinuance of Roads and Reserves Policy 2021*.

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 received a request from one of the adjoining property owners for the sale of the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, as shown hatched in **Attachment 1**.

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 2**. While the majority of the land from the former road has been sold, the section between 9 and 11 Weybridge Street, Surrey Hills, remains unsold. Council took title to the land in 2008.

In regard to the proposed allocation/division there were originally two options which were canvassed - a latitudinal division or a longitudinal division.

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

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

- Provide greater access to the Council drain and Council pit in the land; and
- Reduce the amount of fence 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 was not in favour of the proposed division and strongly favoured a longitudinal division of the land as being the more appropriate option.

Further investigation was undertaken by the Strategic and Statutory Planning Department and it advised the option of a longitudinal division of the land can be accommodated. Council officers identified there is a 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 the stormwater pit servicing 11 Weybridge Street to the centreline of the land.

Furthermore, a longitudinal division is favoured by officers as:

- It would be more conducive to the proper planning and development of the area.
- The division would produce a consistent street frontage width ensuring a subdivision pattern in keeping with the preferred neighbourhood character.
- The division would ensure the detached nature from the side boundaries of the existing housing is maintained, which from a streetscape perspective is the preferred urban design outcome.
- The division would facilitate the removal of the existing vehicular crossover and reinstatement of the nature strip resulting in the provision of additional on street parking for local residents.
- The division allows the stormwater from both the adjoining properties to continue to drain as it is now with no changes needed.

Council at its meeting held on 15 November 2021, resolved to commence the statutory procedures to sell the land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, as shown hatched in **Attachment 1**, to the adjoining property owners in accordance with Council's policy, on a longitudinal basis as shown in draft Plan of Subdivision PS848222C (version 2), shown in **Attachment 3**.

Pursuant to the provisions of section 114 of the *Local Government Act 2020*, a notice advising of Council's intentions was published in The Age newspaper and on Council's website on 24 November 2021.

The notice also stated as part of its community engagement process Council is inviting submissions on the proposal and any submissions received would be considered by Council in accordance with the principles of section 223 of the *Local Government Act 1989*.

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

See **Attachment 6** for photos of the land.

#### 4. Outline of key issues/options

The section of land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills, is considered by officers to be suitable for sale as it is currently unoccupied and unused.

Furthermore, as a result of giving notice of Council's intention to sell the land, submissions have been received from both of the adjoining owners at 9 and 11 Weybridge Street, Surrey Hills, which need to be heard and considered prior to a decision being made to sell the land.

#### 5. Consultation/communication

Public notice of the proposed sale was given in The Age newspaper and on Council's website on 24 November 2021.

The notice also stated as part of its community engagement process Council is inviting submissions on the proposal and any submissions received would be considered by Council in accordance with the principles of section 223 of the *Local Government Act 1989*.

Written submissions have been received from the owners of the adjoining properties at 9 and 11 Weybridge Street, Surrey Hills.

The submission from the owner of 9 Weybridge Street is strongly in favour of the proposed sale and division of the land on a longitudinal basis.

The submission from the owner of 11 Weybridge Street is strongly opposed to the proposed sale and division of the land on a longitudinal division, and favours a latitudinal division as originally proposed.

Copies of the submissions have been circulated to Councillors separately in confidential **Attachment 7**. Both submitters have requested to be heard in support of their submissions.

Council officers support a longitudinal division of the land for engineering and planning reasons as set out in the report.

#### **Consideration of submissions**

In accordance with the principles set out in section 223 of the *Local Government Act 1989*, Council will hear and consider the submissions received and after it has made a decision, must notify the submitters of the decision and the reasons for the decision.

An appraisal of the submissions received together with comments on the issues raised in the submissions is detailed in the table in **Attachment 8**.

#### **Officer's general comments**

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 over all of the land in favour of both Yarra Valley Water and Council to protect the Yarra Valley Water sewer and Council drain within the land.

While all of the land is encumbered for both authorities, the section of land adjoining 9 and 11 Weybridge Street, Surrey Hills does not actually contain any sewerage assets.

## 6. Financial and resource implications

Council's *Discontinuance of Roads and Reserves Policy 2021* outlines the methodology to be applied in determining the purchase price of discontinued roads and reserves. In relation to this discontinuance proposal, Principle 1 of section 4.2.8 of the policy has been utilised to determine the proposed sale price:

### Principle 1

*“Council will offer land from a discontinued road or reserve to the abutting property owners for purchase at the current market value, as determined by Council’s contract valuers. The valuations 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 incapable 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 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 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**

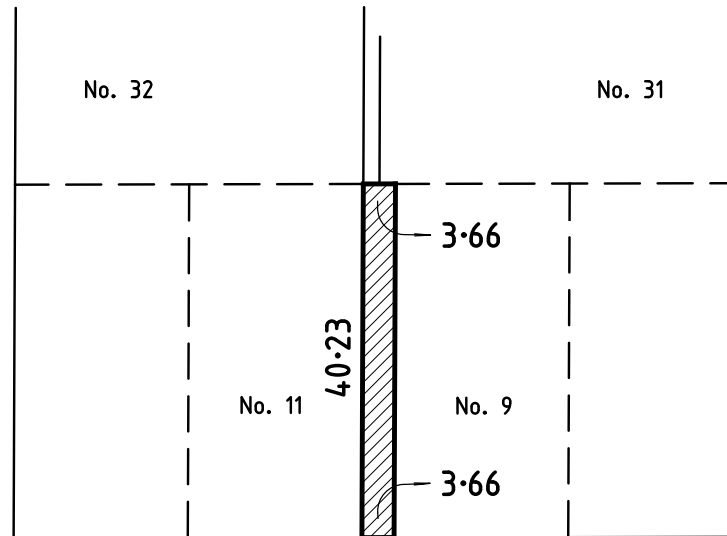
The section of land from the previously discontinued road adjoining 9 and 11 Weybridge Street, Surrey Hills is considered by officers to be suitable for sale to the adjoining property owners. It is recommended the land to be divided on a longitudinal basis having regard to the engineering and planning reasons set out in the report.

**Manager:**                    **Amy Montalti, Chief Financial Officer**

**Report officer:**        Rebecca Dewar, Acting Coordinator Revenue and Property Services



LANGFORD STREET



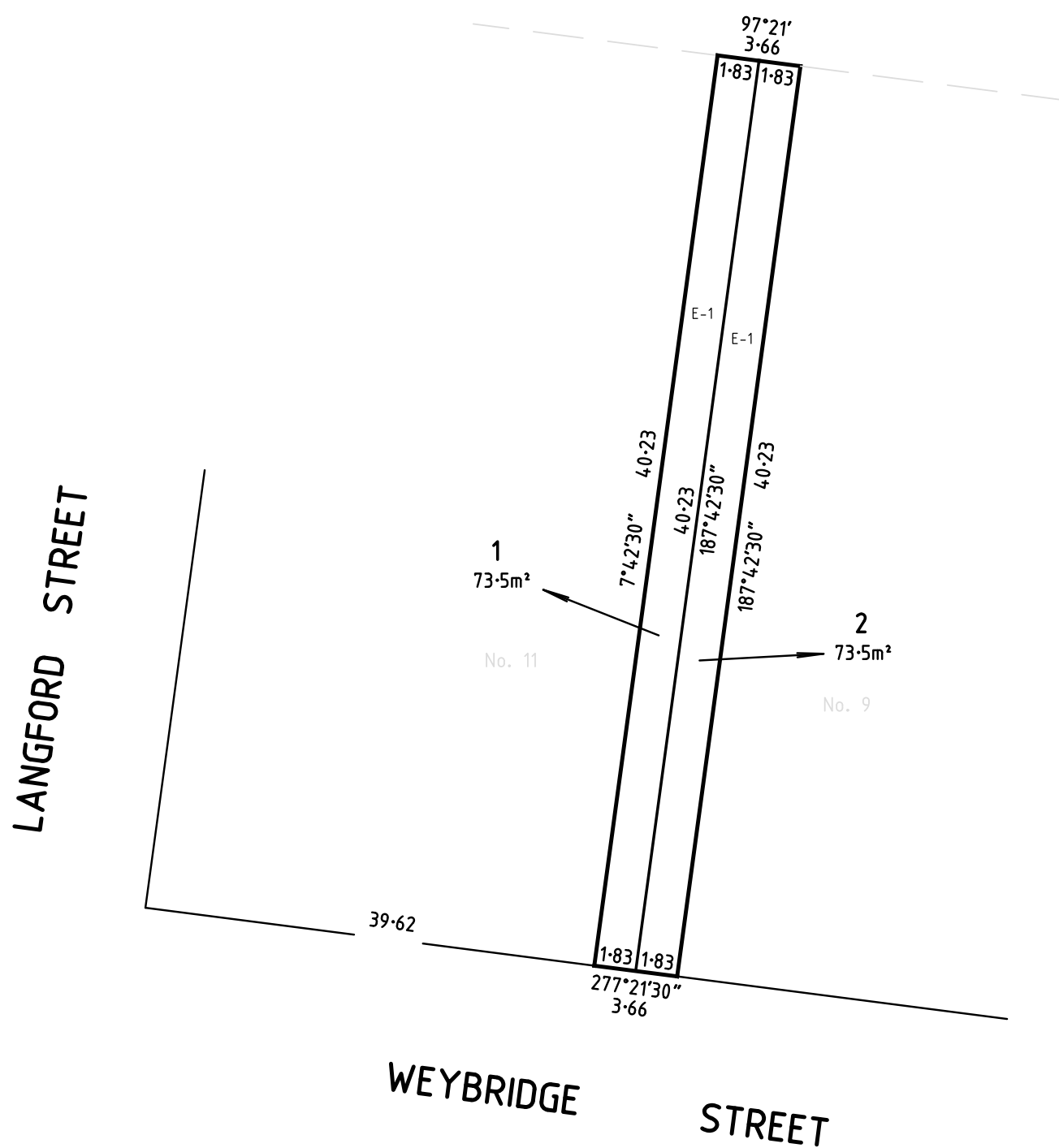
SCHEELE STREET

WEYBRIDGE STREET



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 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							
<div>DEPTH LIMITATION: DOES NOT APPLY</div> <div>STAGING This is not a staged subdivision Planning Permit No.</div> <div>SURVEY 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					

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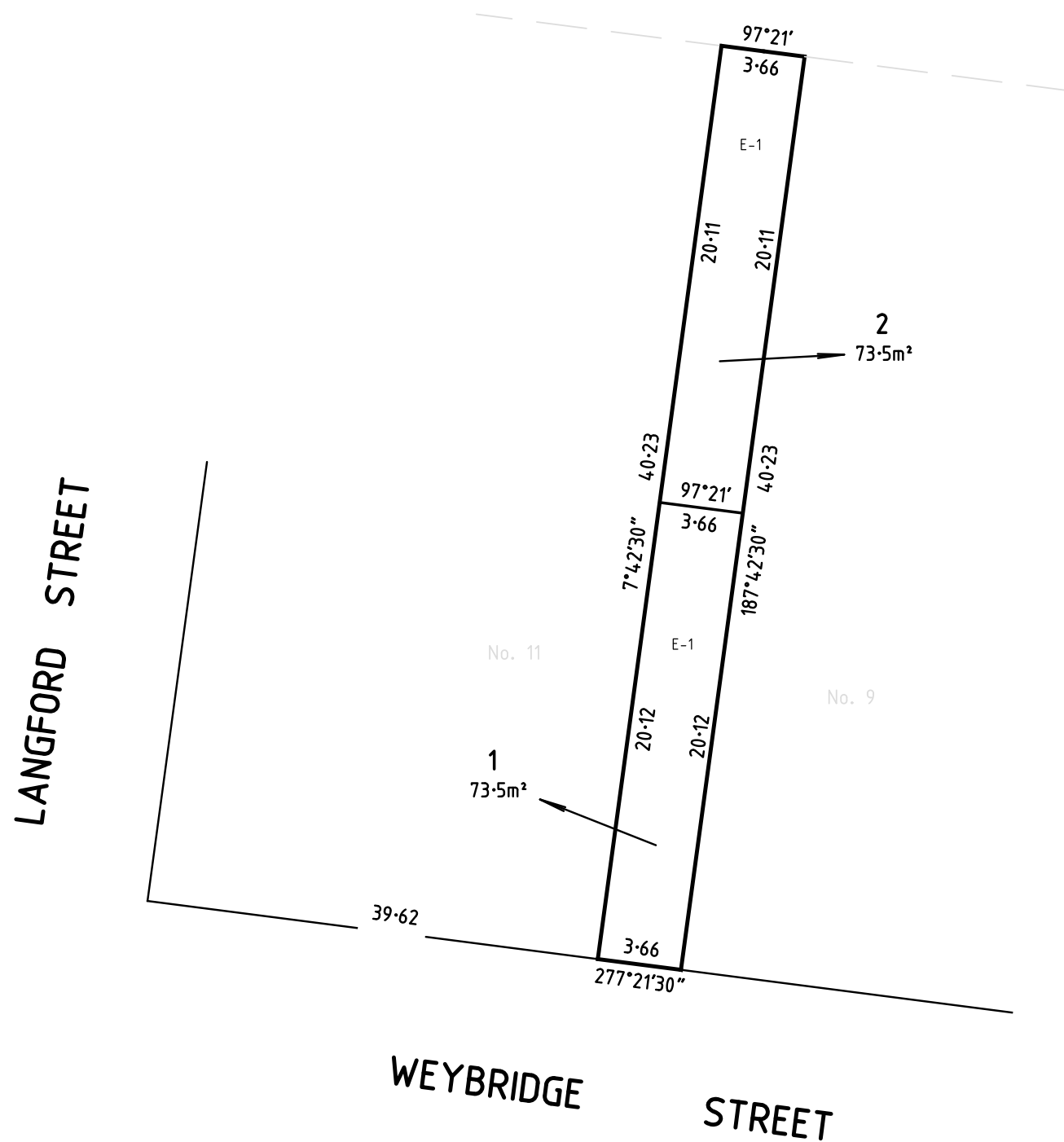
<div><div>Miller   Merrigan</div><div><div>(03) 8720 9500 R (03) 5134 8611</div><div>www.millarmerrigan.com.au</div><div>survey@millarmerrigan.com.au</div><div>SAI GLOBAL    Quality ISO 9001</div></div><div>Land Development Consultants</div><div>Miller &amp; Merrigan Pty Ltd ACN 005 541 668</div><div>Metro 2/126 Merrindale Drive, Croydon 3136</div><div>Regional 156 Commercial Road, Morwell 3840</div><div>Mail PO Box 247 Croydon, Victoria 3136</div></div>	<div><div>SCALE</div><div>1:250</div></div>	<div><div>2-502-557-510</div><div>LENGTHS ARE IN METRES</div></div>			
	<div>SURVEYORS REF: 26854S1</div>	<div>14/5/2021</div>	<div>ORIGINAL SHEET SIZE A3</div>	<div>SHEET 2</div>	
	<div>LICENSED SURVEYOR</div> <div>ANDREW JAMES SMITH, VERSION 2</div> <div>THIS IS NOT A DIGITALLY SIGNED PLAN</div>				



PLAN OF SUBDIVISION				EDITION 1		PS848222C	
<div><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> <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							
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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		10/12/2020	ORIGINAL SHEET SIZE    A3	SHEET 1 OF 2 SHEETS	
		LICENSED SURVEYOR ANDREW JAMES SMITH, VERSION 1 THIS IS NOT A DIGITALLY SIGNED PLAN					

## PS848222C

To be Superseded by Final Plan



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SAI GLOBAL Quality ISO 9001

Land Development Consultants  
Millar & Merrigan Pty Ltd ACN 005 541 668  
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Regional 156 Commercial Road, Morwell 3840  
Mail PO Box 247 Croydon Victoria 3136

10/12/2020

SHEET 2

LICENSED SURVEYOR  
ANDREW JAMES SMITH, VERSION 1  
THIS IS NOT A DIGITALLY SIGNED PLAN

**KEY**

Multi Assessment

Multi Lot

Road Names - Major

Road Names - Minor

Property

Roads - Major

Suburbs

Property

Railway Stations

Railway Line

Natural Waterways

Other Waterways

Yarra River

Melb Water Channel

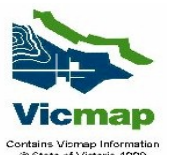
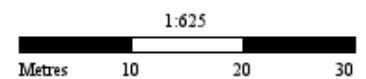
Other Waterways

Yarra River

Recreation Areas

Hospitals

Education



Map Produced: 12 April, 2022 13:01:53



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View from Weybridge Street to the north  
11 Weybridge Street to the left and 9 Weybridge Street to the right



View to the north





View to the South/to Weybridge Street



Stormwater discharge from 11 Weybridge Street into the land





Stormwater discharge from 11 Weybridge Street into the land



Stormwater discharge from 11 Weybridge Street along the western portion of the land

Submission from 9 Weybridge Street	
Issue	Officer's comment
Confirmation of interest	The submitter is in agreement with Council's intention to divide the land from the previously discontinued road on a longitudinal basis and confirms his interest in acquiring the eastern portion of the land adjoining his property.
Submission from 11 Weybridge Street	
Issue	Officer comment
Two prior offers from Council on a latitudinal basis	<p>As part of its usual process to facilitate negotiation for the sale of the land, officers obtained the initial valuation based on the assessment of price per square metre over the entire parcel of land. The consultation with Council's Drainage Engineer was carried out concurrently, which resulted in the initial proposal to divide the land on a latitudinal basis. The initial offer was calculated using the price per square metre provided in the initial valuation.</p> <p>Due to the specific nature of the land on a latitudinal division where the southern portion of the land can be directly accessed from Weybridge Street as compared to the northern portion of the land which could only be utilised as a garden, officers obtained an updated valuation on the specific portions of the land (northern/southern). The updated valuation indicates a difference in value for the northern/southern portions of land which was reflected in the subsequent offer to the adjoining property owners.</p>
Given no opportunity to respond to correspondence between Council and the other adjoining property owner at 9 Weybridge Street	The correspondence between officers and the other adjoining property owner contains private matters/discussions which officers are not in a position to disclose. Pertinent issues relating to the sale proposal had been canvassed and presented to Council at its meeting held on 15 November 2021. As part of Council's community engagement process, all affected parties were invited to make written and verbal submissions on the proposal and any submissions received would be considered by Council prior to a decision being made in accordance with the principles set out in section 223 of the <i>Local Government Act 1989</i> .

Increase of price on a longitudinal basis	<p>When the 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 was discontinued and sold in 1999, an agreement under section 173 of the <i>Planning and Environment Act 1987</i> ("s173 agreement") was required to be registered over the land upon acquisition as part of a condition of sale. The planting and fencing requirement contained within the s173 agreement had been requested to ensure the overland flow of surface water over the land was not impeded in extreme storm events. Upon further investigation by Council's Drainage Engineer, the requirement for a s173 agreement is no longer considered to be necessary. Council's Drainage Engineer considers the easement over the land in favour of Council for drainage purposes is sufficient.</p> <p>The initial offers on a latitudinal basis had taken into consideration the encumbrance of the s173 agreement. The updated offer on a longitudinal basis reflects Council's Drainage Engineer's latest advice for the land to be sold free of the encumbrance of the s173 agreement.</p> <p>Further, the updated valuation reflects the increase in the market value of the land in the everchanging property landscape.</p>
Proposal to divide the land on a longitudinal basis unfair	<p>Both the western and eastern portion of the land on a longitudinal basis have the same market value according to the valuation obtained. The valuation on a latitudinal basis indicates the southern portion of the land which can be directly accessed from Weybridge Street has a greater value when compared to the northern portion which could only be utilised as a garden.</p> <p>Further, officers support a longitudinal division of the land for engineering and planning reasons as espoused in the report.</p>
Preferred outcome - entire parcel of land to be offered to both of the adjoining property owners with the ultimate purchaser to be decided by auction or a coin toss (or similar)	<p>Pursuant to Council's <i>Discontinuance of Roads and Reserves Policy 2021</i>, the division of unoccupied roads will be on an equal share basis to adjoining property owners. All adjoining property owners will be given the first opportunity to purchase the land on an equal share basis before the part of the land is offered to other adjoining property owners.</p>