

## 7.7 Proposed Sale of the rear 218 - 224 High Street, Kew

### Executive Summary

#### Purpose

The purpose of this report is to consider the proposed sale of the Council owned property located at the rear 218-224 High Street, Kew.

#### Background

The land is located at the rear of 218-224 High Street, Kew and has been owned by Council since 1982. It is 211m<sup>2</sup> in size and resembles two joined triangular shapes, see **Attachment 1** for location. Council acquired the land as part of a planning permit in 1980 to allow for potential development under the then Interim Development Policy of 30 September 1980.

The terms of the acquisition of land included an agreement for Council to lease the land back to 218-224 High Street, Kew for use as a car park.

The land adjoins the southern boundary of 218-224 High Street, Kew and is accessed from a right of way from Derrick Street, Kew.

In 2021 a request to purchase the parcel of land was made by the new owner of 218-224 High Street. The land comprises an asphalt carpark with painted line marking. There is also signage in place indicating it is a private car park, see **Attachment 2** for images. This is consistent with the terms of the planning permit issued in 1980.

If the land is sold to the owner of 218-224 High Street, Kew, the land can continue to be used as parking for the property. The host building comprises approximately 1857m<sup>2</sup> of leasable office floor area with 52 car parking spaces. This equates to a car parking rate of 2.8 car parking spaces to each 100m<sup>2</sup>. The Boroondara Planning Scheme for a new development requires a rate of 3.5 car parking spaces to each 100m<sup>2</sup> under Parking Overlay (Schedule 1) for office.

Four of the 52 car parking spaces are partly located on the Council parcel of land. It is not possible to reconfigure the existing car park to gain any efficiency in the layout of the car park given the location of structural columns and the irregular shape of the land.

The potential consolidation of the Council land with the parent title would allow for possible future development. Any future development would require a planning permit and the parking requirements would be considered as part of the process in accordance with the Boroondara Planning Scheme. Officers have advised that parking in the area is sufficient for current demands and do not believe there is a need to place restrictions on the land by way of a section 173 agreement under the *Planning and Environment Act 1987*.

Given the suite of planning controls that relate to the site, including the Commercial 1 Zone and the Design and Development Overlay (Schedule 14), future land uses and development will be restricted and controlled in line with objectives consistent with other sites within the Kew Activity Centre.

Based on the size and location of the land, and due to this having limited independent development potential, it is proposed to sell the land by private treaty to the adjoining owner at 218-224 High Street, Kew at market value plus Council's associated costs.

### Key Issues

As a condition of the sale, the proposed purchaser would be required to apply to have the Planning Permit issued on 15 October 1980 amended to remove the requirements of the agreement and lease for use of the land, and impose a condition for the provision of car parking spaces consistent with the existing use of 218-224 High Street, Kew.

Any sale requires Council to comply with section 114 *Local Government Act 2020*.

### Confidentiality

Confidential information is contained in **Attachment 3**, 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 Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.

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 Council resolve to:

1. Secure an offer from the owner of 218-224 High Street Kew for the purchase of the land at full market value plus Council's associated costs, subject to Council officers complying with section 114 *Local Government Act 2020*.
2. Commence the statutory procedures under section 114 of the *Local Government Act 2020*, for the sale of the Council owned land located at the rear 218-224 High Street, Kew, and described as Lot 2 on Plan of Subdivision 139875, Volume 9688, Folio 749 in Certificate of Title.

---

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

---

## 1. Purpose

The purpose of this report is to consider the proposed sale of the Council owned property located at the rear 218-224 High Street, Kew.

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

This report is consistent with the Boroondara Community Plan 2012-31 (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 BCP, to “Ensure decisions are financially and socially responsible through transparent and ethical processes”.

## 3. Background

In 1980 the sites adjoining 218-224 High Street, Kew were undeveloped. The Council at the time regarded the acquisition of the rear 218-224 High Street, Kew as necessary for a future access road, public open space or a pedestrian mall. This was in accordance with the Interim Development Policy of 30 September 1980.

As part of the planning permit granted to the owner of 218-224 High Street, Kew for the development of their site, two conditions imposed were:

- The land known as rear 218-224 High Street, Kew be transferred to Council ownership; and
- Council was to lease back the land at a peppercorn rental for parking and vehicular egress.

The land is 211m<sup>2</sup> in size and resembles two joined triangular shapes, see **Attachment 1** for location, and has been owned by Council since 1982.

An inspection in December 2021 by Civic Services revealed an asphalt carpark with painted line marking. There is also signage in place indicating it is a private car park, see **Attachment 2** for images. This private usage is inline with the conditions imposed by the 1980 planning permit.

The Kew Junction Structure Plan adopted in 2009 and amended in 2011 includes the land as part of the “core retail areas - encourage development of available site area and additional levels where possible”.

The current Kew Junction Structure Plan outlines a different vision within this area of the Kew Junction Activity Centre. The previous vision to seek access road, public open space or a pedestrian mall in the immediate area of 218-224 High Street is no longer specifically being sought by the current Kew Junction Structure Plan.

Council officers have considered whether there is any need for the land to meet a current or potential community need and concluded the land is not required for a community purpose. Based on the location, size and shape of the land it is not considered as a viable independent property with development potential. The land is considered most suited to the adjoining property at 218-224 High Street, Kew where if consolidated would provide for greater development potential and direct access to the right of way to the south connecting to Derrick Street, Kew.

The proposed sale and consolidation with the site at 218-224 High Street, Kew would result in the disposal of land that has little opportunity to contribute to orderly planning of the area. It would also potentially allow the site to be redeveloped in accordance with current planning vision. As part of any redevelopment plans it would be subject to the planning requirements and scrutiny by Statutory Planning officers. The current planning controls are considered to be sufficient to address any concerns or issues that may arise should a planning permit application be submitted for the site. It is not deemed necessary to have a section 173 Agreement under the *Planning and Environment Act 1987* attached to the property as part of any sale.

It is proposed to liaise directly with the owner of 218-224 High Street, Kew for the sale of the land at market value plus Council's associated costs.

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

The land is currently zoned C1Z (Commercial Zone 1) with overlays DDO14 (Design and Development Overlay 14) and PO1 (Parking Overlay 1). C1Z promotes commercial centres for retail, office, business, entertainment and community uses, and provides for residential uses. In addition to the C1Z provisions, the built form vision of the Kew Junction Structure Plan is outlined in the DDO14 that provide for some key requirements including, but not limited to:

- Building heights should not exceed an overall height of 18 metres;
- Street wall height should not exceed 11 metres;
- Any built form higher than the street wall height should be set back 5 metres; and
- Building to be located at the street edge to enhance pedestrian experience.

The Planning Permit from 1980 would require amending if the property was sold to remove the requirement for the agreement and lease for use of the land for parking.

As part of any sale of Council land, Council is required to comply with section 114 of the *Local Government Act 2020* (the Act). Under the Act Council is required to undertake a community engagement process in accordance with Council's Community Engagement Policy in respect of the proposal before the sale of any land.

#### **114. Restriction on power to sell or exchange land**

(1) Except where section 116 applies, if a Council sells or exchanges any land it must comply with this section.

(2) Before selling or exchanging the land, the Council must—

- (a) at least 4 weeks prior to selling or exchanging the land, publish notice of intention to do so—
  - (i) on the Council's Internet site; and
  - (ii) in any other manner prescribed by the regulations for the purposes of this subsection; and
- (b) undertake a community engagement process in accordance with its Community Engagement Policy; and
- (c) obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960** a valuation of the land which is made not more than 6 months prior to the sale or exchange.

## 5. Consultation/communication

Departments across Council, and adjoining property owners, were consulted with the following feedback provided:

### Asset and Capital Planning

*Asset and Capital Planning have no knowledge of agreements, leases or any required use for this land now or in the future.*

*We support therefore support the intended sale.*

### Capital Projects

*The land provides little if any benefit to the public realm contribution and appears to be well established as part of a car park associated with private land use.*

*Therefore, sale of title supported by Capital Projects.*

### Civic Services

*Have checked and confirmed on Council records that there are no applications or any permits issued for this parcel of Council land. No known interests from our department.*

### Environment and Sustainability and Open Spaces

*There is no documentation my department is aware of in relation to this land.*

*There is also no identified future use.*

### Strategic and Statutory Planning

*Site is within the Commercial 1 Zone. Does not appear to be any public use of the site, or a clear need for Council to retain ownership of this landholding. No objection from a planning or placemaking perspective to sale.*

### Traffic and Transport

*From a Traffic and Transport point of view, there is no current or future use for this odd shaped parcel of land. A sale or lease of the land is supported as there are no proposals given the location and unusual shape of the land.*

*Strategic and Statutory Planning would need to assess vehicle access and ability to still use adjacent spaces.*

### Traffic Officers in Strategic and Statutory Planning

*Convenient and accessible car parking is an important asset for commercial premises. As a part of the analysis regarding the sale of the land, it has been identified that the commercial building at 29-35 Cotham Road has varied from their approved car parking layout that would have complied with the relevant Australian Standard.*

*Should the sale of the Council land proceed, Council could potentially seek the rectification of the approved car parking layout associated with 29-35 Cotham Road to create additional turning area for three westernmost car parking spaces.*

*Alternatively, if no change to the layout of the car parking associated with 29-35 Cotham Road is pursued, the existing layout of the car parking spaces would still allow cars to access, albeit with more than one movement. Given the low traffic environment of the laneway, combined with these spaces to be used by staff (rather than visitors), these car parking spaces will remain a valuable asset for the adjoining commercial property.*

*On that basis there are no impediments, from a private access perspective, to the sale of the Council-owned land.*

### Adjoining Property Owners

*Each of the seven property owners adjoining the right of way that connects to Derrick Street was advised in writing of the request to purchase the land seeking any initial feedback on the proposal. The letter also stated that if the proposal was to progress, a further opportunity to provide a formal submission in relation to the proposal would be provided.*

*The two responses received were both favourable, offering no objections to the proposal.*

In accordance with section 114 of the Act Council is required to undertake a community engagement process in accordance with Council's Community Engagement Policy in respect of the proposal before the sale of any land.

In order to provide a mechanism for feedback from interested parties as part of Council's community engagement process it is proposed to publish a Public Notice in The Age and on Council's website inviting written submissions for consideration. It is also proposed to write directly to the previously contacted owners of the properties adjoining the right of way advising them of the further opportunity to provide feedback. The public notice will advise any person can make a submission in relation to the proposed sale and request to be heard in support of their written submission at a meeting of the Council or its Committee on a date, time, and place to be determined by the Council.

## **6. Financial and resource implications**

If Council proceeds with the sale of the property, the sale will generate once off income for Council together with the ability to rate the land in the future. All costs associated with the sale are proposed to be recouped from the proposed purchaser.

## **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 that the proposed actions contained in this report represent no breaches of, or infringements upon, those prescribed rights.

## **8. Social and environmental issues**

The proposed sale of the property located at the rear 218-224 High Street, Kew is not expected to have a positive or negative impact on the community, social wellbeing or the environment.

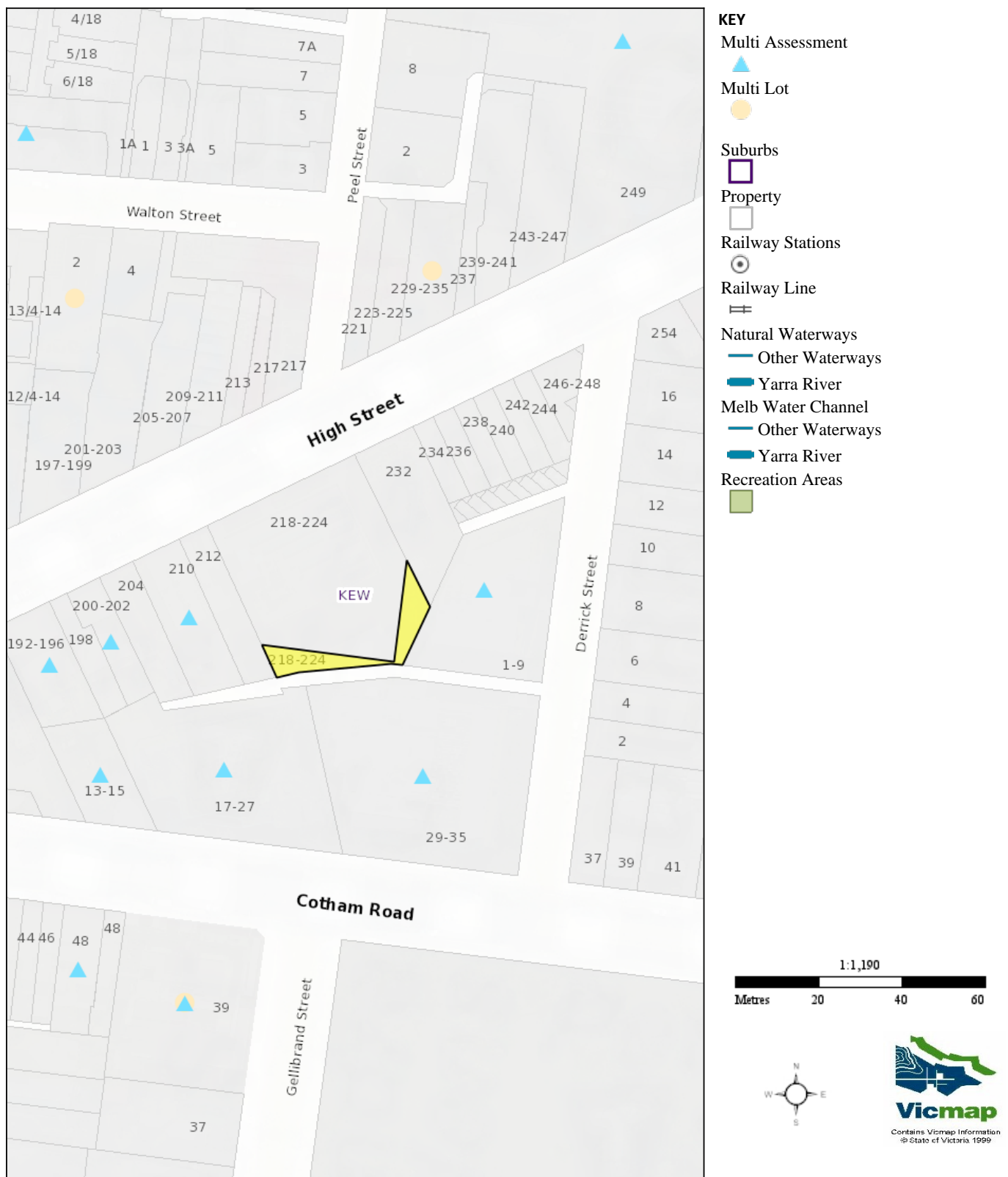
## **9. Evaluation and review**

The rear 218-224 High Street, Kew is not currently used for any general community use and no future use has been identified. The property is considered surplus by officers.

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

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

## Rear 218-224 High Street, Kew





## Attachment 2

Images of the land. Red outlines show approximate sections of Council land.

**Aerial Overview**



Source: [www.nearmap.com/au/en](http://www.nearmap.com/au/en) with the subject property outlined in red

