

7.11 35 McShane Street, Balwyn North - Proposed discontinuance and sale of road reserve

Executive Summary

Purpose

This report is to consider commencement of the statutory procedures to discontinue and sell 3.05m of the road reserve fronting 35 McShane Street, Balwyn North. The section of road reserve is considered by officers to be no longer required for public access and has been enclosed within the adjoining property for in excess of 15 years.

Background

The owners of 35 McShane Street, Balwyn North have requested to purchase the section of road reserve fronting their property.

In 1919 when the area was subdivided, the road was shown on the plan as 18.29m (60ft) wide. When the area was developed the road, footpaths and nature strips were set out at only 15.24 (50ft). The difference in width was enclosed within the properties on the eastern side of McShane Street, 35 McShane Street being one of those properties.

Consultation has been undertaken with relevant Council departments and external service authorities as detailed in section 5 of this report resulting in no objection to the sale. Adjoining owners have also been notified of the proposal and to date no objections have been received.

Key Issues

The proposed commencement of the statutory procedures requires Council to give public notice of its intention to discontinue and sell the road reserve and invite submissions from affected parties.

The process of discontinuance and sale of the road reserve fronting 35 McShane Street commenced in March 2020. As a result of issues with the base map, negotiations have been required with various external authorities resulting in a protracted process. As a consequence, this report has been prepared applying the principles contained within the *Discontinuance of Roads and Reserves Policy 2021*. Discussions with the landowners have also proceeded in good faith in accordance with the 2021 policy as opposed to any impending changes under consideration.

If an adverse possession claim is lodged, this will be dealt with by Land Victoria in advance of any attempt by council to discontinue the road with a view to then selling. Any subsequent dealings with the title, including sale following a discontinuance, will be dealt with secondary.

Confidentiality

Confidential information is contained in **Attachment 5**, 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 Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released. 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 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, acting under section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020*, resolve to:

1. Commence the statutory procedures to discontinue part of the road reserve fronting 35 McShane Street, Balwyn North, shown hatched in Attachment 1 and as annexed to the minutes.
2. Give public notice under sections 223 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020* in the appropriate newspaper and on Council's website of the intention to discontinue the road reserve and sell the land from the road reserve to the owner of 35 McShane Street, Balwyn North by private treaty for \$9,000 inclusive of GST plus Council's costs.
3. If any submissions are received following publication of the public notice, note a further report will be presented to a future meeting of the Services Delegated Committee of Council to enable consideration of the submissions and for a decision on whether to proceed with the discontinuance and sale of the road reserve in full, in part, or not to discontinue and sell the road reserve.
4. If no submissions are received following 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 discontinuance and sale of the road reserve.
5. 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 Attachment 5 of this report and annexed to the confidential minutes.
6. Note the discontinuance and sale will not affect any right, power or interest held by Yarra Valley Water in the road reserve in connection with any sewers, drains or pipes under the control of Yarra Valley Water in or near the road reserve.

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 part of the road reserve at the front of 35 McShane Street, Balwyn North shown hatched in **Attachments 1 and 2** and to consider application of Principle 3 under section 4.2.8 of Council's *Discontinuance of Roads and Reserves Policy 2021*.

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 BCP, to "Ensure decisions are financially and socially responsible through transparent and ethical processes".

3. Background

Council received a request from the owner of 35 McShane Street, Balwyn North, for the discontinuance and sale of 3.05m of road reserve fronting their property, as shown hatched on **Attachments 1 and 2**. The owners have constructed a new family home and are unable to replace the existing front fence to secure the property as the fence sits within the road reserve and is not included in the title boundary.

The section of the road reserve remains in the name of the original subdivider, has not been constructed and is occupied as part of the applicant's property. The neighbouring properties at 39, 41 and 43 McShane Street, Balwyn North also occupy part of the road reserve.

The section of road reserve at the front of 37 McShane Street, Balwyn North, shown cross-hatched in **Attachment 2**, was previously discontinued by the former City of Camberwell in 1989.

Whilst McShane Street is shown as an 18.29m (60ft) road on the original 1919 subdivision for the area, the physical road, including kerb and channel, footpaths and nature strips, measures only 15.24 (50ft). Approximately 3.05m (10ft) of the road reserve is enclosed within the properties on the eastern side of the road, 35 McShane Street being one of those properties.

This occupation is thought to have commenced when the house lots were first laid out and McShane Street was constructed. A similar situation appears to exist which affects approximately 55 properties in various streets within the same subdivision.

See **Attachment 3** for a copy of the Title Plan showing the land to be transferred if the road reserve is discontinued.

See **Attachment 4** for an aerial view.

4. Outline of key issues/options

It is considered by officers that the section of road reserve is no longer required for public access, or any other public purpose, and part of the road reserve has been enclosed within the adjoining property for in excess of 15 years.

If an adverse possession claim is lodged, this will be dealt with by Land Victoria in advance of any attempt by council to discontinue the road with a view to then selling. Any subsequent dealings with the title, including sale following a discontinuance, will be dealt with secondary.

5. Consultation/communication

The owners of 39 to 43 McShane Street, Balwyn North have been consulted concerning the road reserve fronting their properties. Initially, none of these three property owners expressed a desire for the road reserve enclosed within their properties to be included with the current proposal.

In recent months 41 McShane Street has been sold and the incoming owner has expressed an interest in acquiring the road reserve fronting their property. Accordingly, a further proposed discontinuance is likely in the latter part of 2022, once settlement has occurred.

The following service authorities have been consulted:

- Yarra Valley Water
- Melbourne Water
- Telstra
- Multinet Gas
- CitiPower
- Optus
- AusNet Transmission Services (major electricity transmission lines)

No objections from the abovementioned authorities have been received. A Yarra Valley Water sewer traverses part of the road reserve and accordingly an easement will be 'saved' over the land as part of the proposed discontinuance process.

The following Council departments have been consulted:

- Building Services
- Statutory Planning
- Strategic Planning
- Projects & Strategy
- Traffic and Transport
- Strategic Asset Management

No objections have been received and Council does not have any assets located in the road reserve.

Whilst McShane Street, Balwyn North is a Public Road on Council's Register of Public Roads under the *Road Management Act 2004*, the occupied western 3.05m portion of road reserve is not considered to be part of the Public Road.

The statutory procedures require Council to give public notice of its intention to discontinue and sell the road reserve and invite submissions from affected parties. In addition, all abutting 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.

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 to proceed with the discontinuance and sale of the road reserve in full, in part or not to discontinue and sell the road reserve.

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 discontinuance and sale of the road reserve, including the execution of all relevant documentation.

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. In relation to this discontinuance proposal, Principle 3 of section 4.2.8 of the policy has been utilised to determine the proposed sale price:

Principle 3

"When a property owner can demonstrate exclusive occupation of a non-Council titled road or reserve for 15 years or longer and 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.

A Council report seeking authorisation for the price negotiated will occur."

Confidential **Attachment 5** contains confidential financial details.

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

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

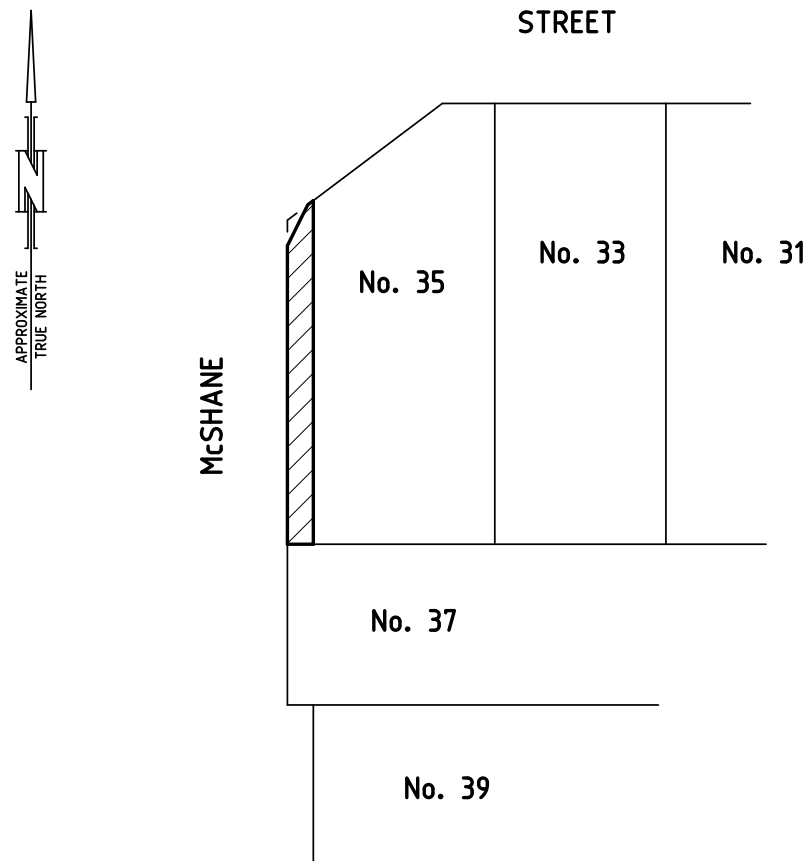
Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants Macquarie Local Government Lawyers and no issues have been identified.

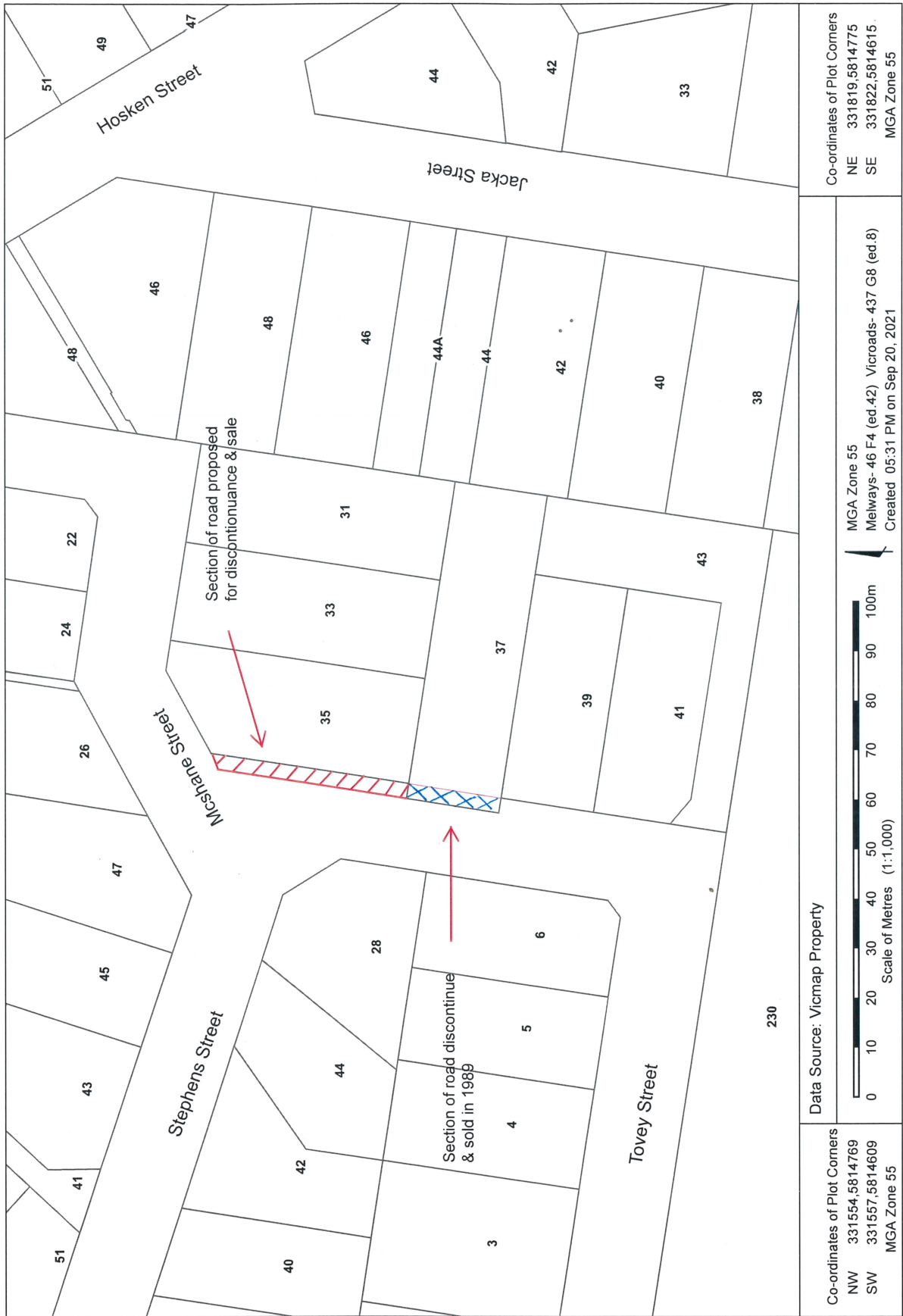
10. Conclusion

It is considered by officers that the section of road reserve fronting 35 McShane Street, Balwyn North is no longer reasonably required as a road for public use or for any other public purpose. It is considered appropriate that procedures be commenced for its discontinuance and sale to the adjoining owner in accordance with Council's *Discontinuance of Roads and Reserves Policy 2021*. Progressing the proposal will formalise the occupation of the land by the adjoining property which has prevailed for many years.

Manager: Amy Montalti, Chief Financial Officer

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

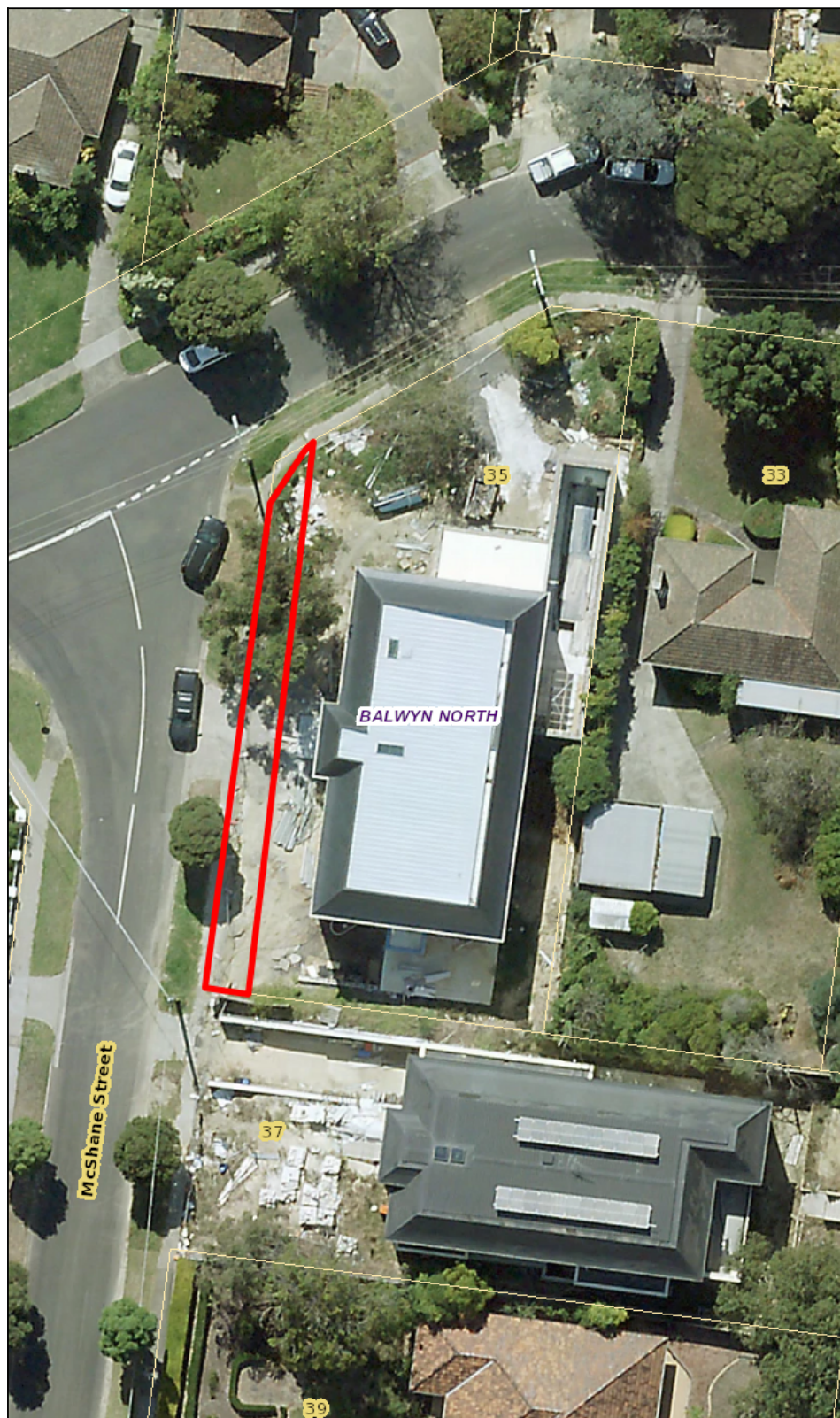




TITLE PLAN				EDITION 1	TP965736B
LOCATION OF LAND PARISH: BOROONDARA TOWNSHIP: _____ SECTION: _____ CROWN ALLOTMENT: _____ CROWN PORTION: _____ ELGAR'S CROWN SPECIAL SURVEY (PART) TITLE REFERENCE: VOL. 12179 FOL. 634 LAST PLAN REFERENCE: LP7529 DEPTH LIMITATION: DOES NOT APPLY.				WARNING: THIS PLAN REPRESENTS AN EXPECTED DIVISION OF LAND; ANY ONE LOT MAY NOT HAVE BEEN CREATED; CHECK THE LOT/PLAN INDEX FOR CURRENT INFORMATION;	
				NOTATIONS	
EASEMENT INFORMATION					THIS PLAN HAS BEEN PREPARED FOR LAND VICTORIA TITLE DIAGRAM PURPOSES. Date: Assistant Registrar of Titles
Easement Reference	Purpose/ Authority	Width (Metres)	Origin	Land Benefited/ In Favour Of	
E-1	AS PROVIDED FOR IN SEC. 207C L.G.A. 1989.	2	SEC 207C L.G.A. 1989.	YARRA VALLEY WATER	
FOR DIAGRAM, SEE SHEET 2					
Millar Merrigan <small>(03) 8720 9500 R (03) 5134 8611 www.millarmerrigan.com.au survey@millarmerrigan.com.au SAE GLOBAL Quality ISO 9001</small>		SCALE 1:250		ORIGINAL SHEET SIZE A3	FILE NO: LGD
		SURVEYORS REF 27455S1 <small>VERSION 1 DATE 26/7/2021</small>		DEALING CODE: LGA	SHEET 1 OF 2

TITLEPL;DWG

TITLEPL;DWG

**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

1:433

Metres 10 20



Contains Vicmap Information
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