

## 7.5 20 and 22 Sir Garnet Road, Surrey Hills - Proposed sale of land from a previously discontinued road

### Executive Summary

#### Purpose

This report is to consider commencement of the statutory procedures to sell a parcel of previously discontinued road at the front of 20 and 22 Sir Garnet Road, Surrey Hills. The land is considered by officers to be of little value to Council and has been occupied by the adjoining properties for in excess of 15 years.

#### Background

In May 1991, the former City of Camberwell discontinued a 4.88m wide section of road reserve at the front of 20 to 24 Sir Garnet Road, Surrey Hills and at the rear of 29 Guildford Road, Surrey Hills, shown hatched, cross-hatched and shaded in **Attachment 1**.

The discontinuance included the northern 4.88m of road reserve forming part of the 1.83m wide walkway between 22 and 24 Sir Garnet Road, Surrey Hills, shown shaded in **Attachment 1**.

Following the discontinuance, two parcels of land from the former road at the front of 24 Sir Garnet Road and the rear of 29 Guildford Road, Surrey Hills, shown hatched on **Attachment 1**, were sold. Two parcels of land at the front of 20 and 22 Sir Garnet Road, Surrey Hills, shown cross-hatched in **Attachment 1** and as Lots 1 and 2 on Title Plan TP969126J in **Attachment 2**, remain unsold.

The unsold parcels of land from the discontinued road reserve forming part of the walkway (shown shaded in **Attachment 1**) and at the front of 20 and 22 Sir Garnet Road, Surrey Hills (shown cross-hatched in **Attachment 1**) remain in the name of the original subdivider.

The land at the front of 20 and 22 Sir Garnet Road, Surrey Hills has formed part of the front garden area of both properties for many years. Recent consultation and negotiations have resulted in the owners of 20 and 22 Sir Garnet Road, Surrey Hills signing conditional Offers to Purchase the land shown as Lots 1 and 2, respectively on Title Plan TP969126J in **Attachment 2**.

Furthermore, it is proposed Council take title to the land shown shaded in **Attachment 1** and as Lot 3 on Title Plan TP969126J in **Attachment 2**, consistent with its use as part of a walkway through the area.

#### Key Issues

The land proposed to be sold is considered by officers to be of little value to Council and has been occupied by the adjoining properties for in excess of 15 years.

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

As discussions with the adjoining landowners in occupation of the land were undertaken in good faith well before the recent policy changes adopted by Council in August 2022, this report has been prepared applying the principles contained within the Discontinuance of Roads and Reserves Policy 2021.

Given the long-time occupation of the land in excess of 15 years by 20 and 22 Sir Garnet Road, Surrey Hills, the land may be subject to adverse possession claims by the occupying properties. If an adverse possession claim is lodged, this will be dealt with by Land Victoria in advance of any attempt by Council to sell the land. Any subsequent dealings with the title will be dealt with secondary.

Council will take title to Lot 3 on Title Plan TP969126J in **Attachment 2**.

#### Confidentiality

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 Council business, 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 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. Commence the statutory procedures to sell the land from the previously discontinued road at the front of 20 and 22 Sir Garnet Road, Surrey Hills, shown as Lots 1 and 2 on Title Plan TP969126J in **Attachment 2** and annexed to the minutes.
2. Give notice of its intention to sell the land in the appropriate newspaper and on Council's website and in such notice state that Council proposes to sell the land to the owners of 20 and 22 Sir Garnet Road, Surrey Hills, by private treaty.
3. If any submissions are received following publication of the notice of intention to sell the land, 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 sale of the land.
4. If no submissions are received following 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.
5. Sell the land from the previously discontinued road to the owners of 20 and 22 Sir Garnet Road, Surrey Hills, for the sum of \$15,156.60 each (inclusive of GST), in accordance with Principle 3 of Council's Discontinuance of Roads and Reserves Policy 2021.
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 **Attachment 4** of this report and annexed to the confidential minutes.

7. Note Council will take title to the land shown as Lot 3 on Title Plan TP969126J in **Attachment 2** and annexed to the minutes.

**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 a parcel of previously discontinued road at the front of 20 and 22 Sir Garnet Road, Surrey Hills, shown cross-hatched in **Attachment 1** and as Lots 1 and 2 on Title Plan TP969126J in **Attachment 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 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 May 1991, the former City of Camberwell discontinued a 4.88m wide section of road reserve at the front of 20 to 24 Sir Garnet Road, Surrey Hills and at the rear of 29 Guildford Road, Surrey Hills, shown hatched, cross-hatched and shaded in **Attachment 1**.

The discontinuance included the northern 4.88m of road reserve forming part of the 1.83m wide walkway between 22 and 24 Sir Garnet Road, Surrey Hills, shown shaded in **Attachment 1**.

Following the discontinuance, two parcels of land from the former road at the front of 24 Sir Garnet Road and the rear of 29 Guildford Road, Surrey Hills, shown hatched in **Attachment 1**, were sold. Two parcels of land at the front of 20 and 22 Sir Garnet Road, Surrey Hills, shown cross-hatched in **Attachment 1** and as Lots 1 and 2 on Title Plan TP969126J in **Attachment 2**, remain unsold.

The unsold parcels of land from the discontinued road reserve forming part of the walkway (shown shaded in **Attachment 1**) and at the front of 20 and 22 Sir Garnet Road, Surrey Hills (shown cross-hatched in **Attachment 1**) remain in the name of the original subdivider. It was not Council's practice in the past to take title to land from discontinued roads where there was no purchaser. The aim for Council to take title to land from discontinued roads that remains unsold has been included in the current Discontinuance of Roads and Reserves Policy 2022, recently adopted by Council in August 2022.

The land at the front of 20 and 22 Sir Garnet Road, Surrey Hills has formed part of the front garden area of both properties for many years. Recent consultation and negotiations have resulted in the owners of 20 and 22 Sir Garnet Road, Surrey Hills signing conditional Offers to Purchase the land shown as Lots 1 and 2, respectively on Title Plan TP969126J in **Attachment 2**.

Furthermore, it is proposed Council take title to the land shown shaded in **Attachment 1** as Lot 3 on Title Plan TP969126J in **Attachment 2**, consistent with its use as part of a walkway through the area.

See **Attachment 3** for an aerial view.

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

The remaining section of unsold land from the discontinued road has been occupied as part of the front garden area of the two adjoining properties at 20 and 22 Sir Garnet Road, Surrey Hills for in excess of 15 years, including prior to May 1991 when the road was discontinued.

The land is considered by officers to be of little value to Council. The occupation of the land does not impede pedestrian or vehicle movements or sight lines as the associated footpath and road have been constructed in light of the encroachment. The land is not required for indented parking, nor is it required/suitable for an enhanced tree canopy.

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 publish a notice of its intention to sell the land on Council's website and undertake a community engagement process in accordance with its community engagement policy before the sale of the land.

The process to sell the land occupied by 20 and 22 Sir Garnet Road, Surrey Hills commenced in January 2021. This matter has however been on hold for some time pending both a review of Council's policy position on occupied road reserves at the front of properties and the more general review of Council's discontinuance policy. As a consequence, this report has been prepared applying the principles contained within the Discontinuance of Roads and Reserves Policy 2021. Discussions with the adjoining landowners in occupation were undertaken in good faith well before the recent policy changes adopted by Council in August 2022.

As Council did not take title to the land at the time of discontinuance, the land remains in the name of the original subdivider. Given the long-time occupation of the land in excess of 15 years by 20 and 22 Sir Garnet Road, Surrey Hills, the land may be subject to adverse possession claims by the occupying properties. If an adverse possession claim is lodged, this will be dealt with by Land Victoria in advance of any attempt by Council to sell the land.

Council will take title to Lot 3 on Title Plan TP969126J in **Attachment 2**, consistent with the use of the land as part of a walkway through the area.

## 5. Consultation/communication

The owners of 20 and 22 Sir Garnet Road, Surrey Hills, have made conditional Offers to Purchase the land shown as Lots 1 and 2, respectively on Title Plan TP969126J in **Attachment 2**, in accordance with Council's policy. The owners have also agreed to meet a share of Council's costs associated with undertaking the sale.

The procedures under section 114 of the *Local Government Act 2020* require Council publish a notice of its intention to sell the land on Council's website and undertake a community engagement process in accordance with its community engagement policy 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 Council publish a notice of its intention to sell the land in *The Age* and on Council's website inviting written submissions for consideration. The 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 Council.

It is also proposed Council write directly to all abutting property owners informing them of the opportunity to provide feedback.

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 Office 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 2021 outlines the methodology to be applied in determining the purchase price of discontinued roads and reserves. In relation to this 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 4** 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 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 land is considered by officers to be of little value to Council. It is considered appropriate procedures be commenced for its sale to the adjoining owners in occupation 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 properties which has prevailed for many years.

<b>Manager:</b>	<b>Amy Montalti, Chief Financial Officer</b>
<b>Report officer:</b>	Michael Hutchison, Head of Strategic Property and Revenue





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## 20-22 Sir Garnet Road, Surrey Hills



Land from former road proposed to be sold



### KEY

Multi Assessment



Multi Lot



Road Names - Major

Road Names - Minor

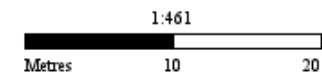
Property



Roads - Major



Suburbs



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