

7 Presentation of officer reports

7.1 Proposed discontinuance and sale of right of way (road) - Adjoining 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn

Executive Summary

Purpose

This report is to consider commencement of the statutory procedures to discontinue and sell the road adjoining 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn.

Background

Council received a request from Balwyn Lifestyle Centre Pty Ltd, the owner of 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn for the discontinuance and sale of the road adjoining its properties, as shown hatched on **Attachments 1 and 2** ("the Road").

Key Issues

- The Road is in the name of Council.
- The Road is considered by officers to be no longer reasonably required for public access.
- The land from the Road is intended to be incorporated into a proposed mixed-use development of surrounding properties.
- Any sale of Council land requires Council to comply with section 114 of the *Local Government Act 2020*.
- There is currently a Council drain in the Road.

Confidentiality

Confidential information is contained in **Attachment 5**, as circulated in the confidential section of the agenda attachments. The information in this attachment is deemed to be confidential in accordance with section 66(2)(a) and the definition of 'confidential information' in section 3(1) of the *Local Government Act 2020*. The information is Council business information which would prejudice the Council's position in commercial negotiations if prematurely released.

If discussion of the confidential information in the attachments to this report is required for Council to make a decision, Council may resolve to discuss the matter in a confidential session or to defer the matter to the confidential section of the agenda.

Officers' recommendation

That Council resolve to

1. Commence the statutory procedures under section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020* to discontinue and sell the road adjoining 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn, shown on **Attachment 3** as Lot 1 on TP960019J and as annexed to the minutes ("the Road"), to Balwyn Lifestyle Centre Pty Ltd, by private treaty in accordance with Council's Discontinuance of Roads and Reserves Policy 2022 ("Council's Policy").

2. Give public notice under section 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 and sell the land from the Road to Balwyn Lifestyle Centre Pty Ltd by private treaty in accordance with Council's Policy.
3. Invite both written and verbal submissions on the proposed discontinuance and sale.
4. Note a further report will be presented to a future meeting of the Services Delegated Committee of Council should any submissions be received to enable consideration of the submissions and for a decision on whether to proceed with the proposed discontinuance and sale of the Road in full, in part or not to proceed with the discontinuance and sale.
5. 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 if no submissions are received.
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 from the Road to Balwyn Lifestyle Centre Pty for the sum of \$1,320,000 (inclusive of GST) plus Council's associated costs in accordance with Principle 1 of Council's Discontinuance of Roads and Reserves Policy 2022.

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 the road adjoining the properties from 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn shown hatched in **Attachment 1 and 2** ("the Road").

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

This matter is addressed under Council's Discontinuance of Roads and Reserves Policy 2022 ("Council Policy").

Principle 1 of section 4.2.8 of Council's Policy has been used in determining the purchase price of the Reserve.

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."*

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 which states "Decision-making is transparent and accountable through open governance processes with timely communication and reporting" is applicable.

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 Balwyn Lifestyle Centre Pty Ltd, the owner of 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn for the discontinuance and sale of the Road adjoining its properties, shown hatched on **Attachments 1 and 2**.

The Road has an area of 220m² and is shown as Lot 1 on TP96019J on **Attachment 3**. It is currently accessible and can be used for both vehicular and pedestrian access to the adjoining properties, which are all owned by Balwyn Lifestyle Centre Pty Ltd. If the Road is discontinued and sold, Balwyn Lifestyle Centre Pty Ltd seeks to incorporate the land into a proposed development.

A planning permit (PP18/00864) has been issued for the construction of a mixed-use development accommodating 70 (1, 2 and 3 bedroom) apartments, a ground floor supermarket (Coles) and three basement level car parks. The proposed development is extensive and covers the property addresses currently known as 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn (shown outlined red in **Attachment 4**).

4. Outline of key issues/options

It is considered by officers that the Road adjoining 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn, is no longer reasonably required as a road for public use.

The proposed commencement of the statutory procedures under section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020* requires Council to give public notice of its intention to discontinue and sell the Road and invite submissions from any affected parties.

5. Consultation/communication

Stakeholder engagement

Balwyn Lifestyle Centre Pty Ltd owns the adjoining properties and accordingly notification to other properties was not considered necessary.

Service authorities have been consulted and no objections were received. Yarra Valley Water has a sewer in the Road therefore an easement will be 'saved' as part of the proposed discontinuance process.

Internal Council departments have been consulted and no objections were received. Council has a drain within the Road and therefore an easement will be 'saved' in favour of Council as part of the proposed discontinuance process.

These sewer and drainage assets will need to be relocated or abandoned when the proposed development commences, and the basement car parks are constructed. It is noted that the easements will remain in place until this occurs.

Statutory community engagement and consultation

The statutory procedures set out in this report require Council to give public notice of its intention to discontinue and sell the Road. Public notice will be advertised on Council's webpage and in The Age newspaper, consistent with Council Policy.

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 prior to a decision being made.

If no submissions are received, the Chief Executive Officer, or any such other person as the Chief Executive Officer appoints and authorises, will undertake the necessary procedural steps to complete the formal discontinuance of the

Road and sale and transfer of the land, including the execution of all relevant documentation.

6. Financial and resource implications

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

Balwyn Lifestyle Centre Pty Ltd has signed a conditional Offer to Purchase the Road from Council for the sum of \$1,320,000 (inclusive of GST), plus costs which are currently estimated at \$57,000.

Table 1: Land sale revenue

Item	Amount (GST inclusive)
Land sale price	\$1,320,000.00
Reimbursement of Council's costs (estimate)	\$57,000.00
Total	\$1,377,000.00

See **Confidential Attachment 5** for a copy of the valuation report and certificate.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

The proposed discontinuance and sale of the Road is not expected to have a negative impact on the community, social wellbeing or the environment as the land is intended to be incorporated into the proposed redevelopment of the adjoining properties.

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.

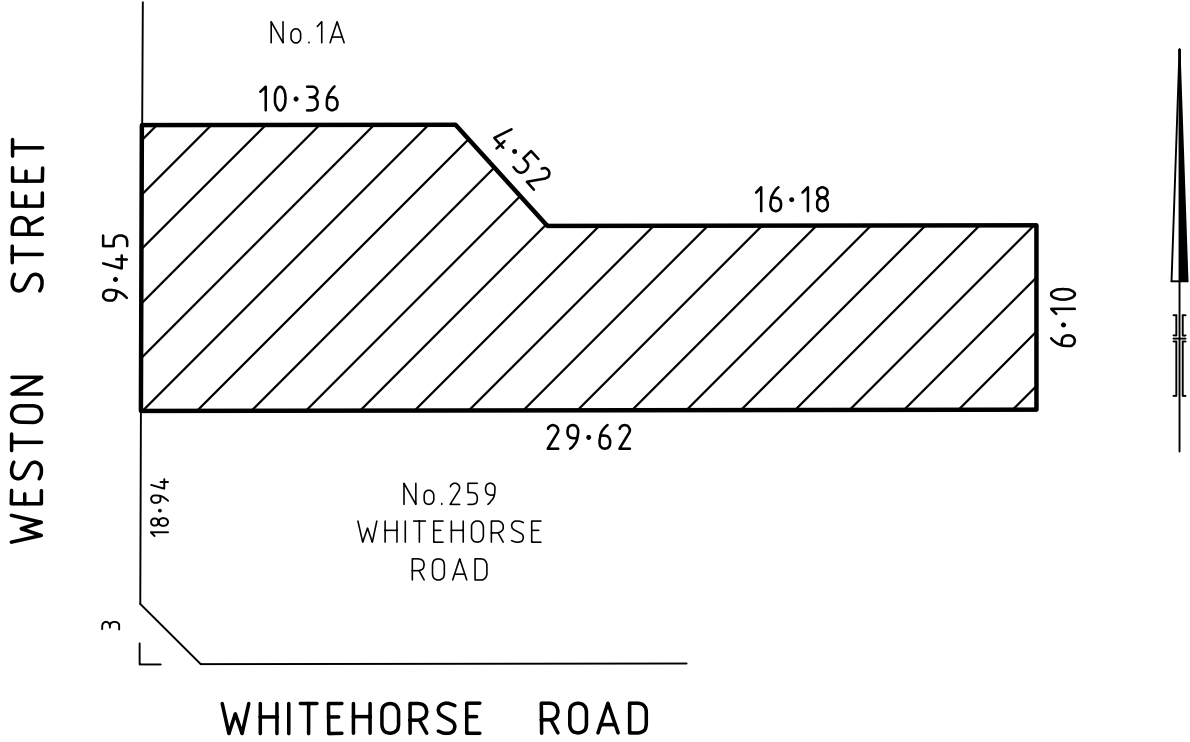
10. Conclusion

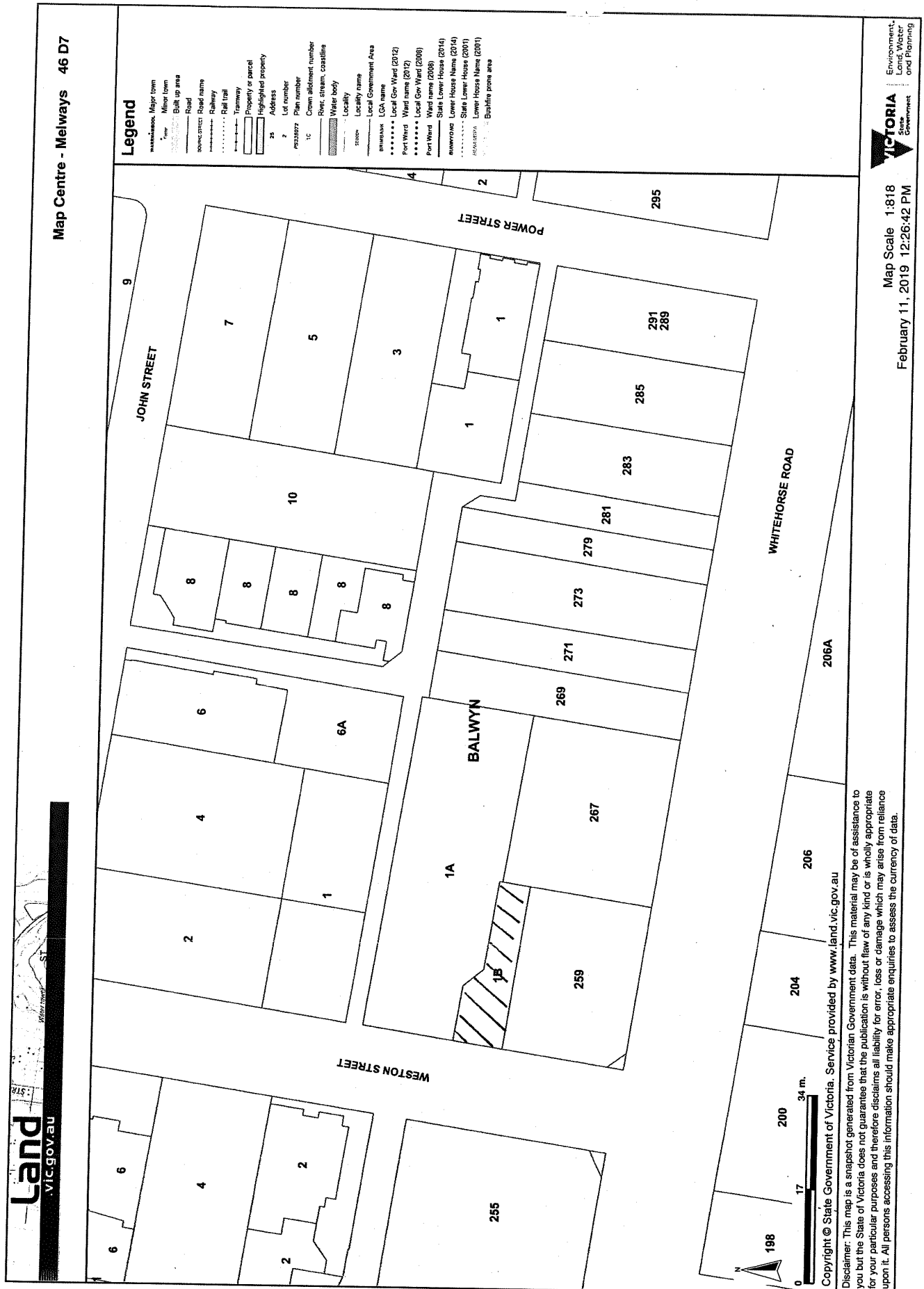
It is considered by officers that the Road adjoining 259 to 281 Whitehorse Road and 1A Weston Street, Balwyn is no longer reasonably required as a road for public use.

The land from the Road is intended to be incorporated into the proposed approved development of Balwyn Lifestyle Centre Pty Ltd's adjoining properties and as such it is appropriate that procedures be commenced for its discontinuance and sale.

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

Report officer: Michael Hutchison, Head of Strategic Property and Revenue





TITLE PLAN		EDITION 1	TP960019J	
LOCATION OF LAND PARISH BOROONDARA PART OF EDGARS CROWN SPECIAL SURVEY SECTION - CROWN ALLOTMENT - CROWN PORTION - LAST PLAN REFERENCE TP138570Y DEPTH LIMITATION DOES NOT APPLY TITLE REFERENCE VOL.9796 FOL.266 MGA CO-ORDINATES E 330 760 (APPROX. CENTRE OF LAND IN PLAN) N 5 813 300 ZONE 55		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. <hr/> NOTATIONS THIS PLAN IS NOT BASED ON SURVEY.		
EASEMENT INFORMATION				
LEGEND E- ENCUMBERING EASEMENT OR CONDITION IN CROWN GRANT IN THE NATURE OF AN EASEMENT OR OTHER ENCUMBRANCE A- APPURTENANT EASEMENT R- ENCUMBERING EASEMENT (ROAD)				
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED/IN FAVOUR OF
E-1 & E-3	AS PROVIDED FOR IN SEC.207C LGA 1989	SEE DIAGRAM	SEC.207C LGA 1989	BOROONDARA CITY COUNCIL
E-2 & E-3	AS PROVIDED FOR IN SEC.207C LGA 1989	2	SEC.207C LGA 1989	YARRA VALLEY WATER

WHITEHORSE ROAD

SCALE 1:200	<p style="text-align: center; font-size: small;">LENGTHS ARE IN METRES</p>	LICENSED SURVEYOR DAVID JOHN MONAHAN SIGNATURE DATE / /	FILE NO : LGD DEALING CODE : LGA
SHEET 1 OF 1 SHEET ORIGINAL SHEET SIZE: A3 BARKER MONAHAN <small>A.C.N. 005 394 865 SURVEYORS, DEVELOPMENT AND LOCAL GOVERNMENT CONSULTANTS 581 GILBERT ROAD, PRESTON 3072 P.O. BOX 2546 REGENT WEST 3072 TELEPHONE 9478 6133 FAX 9470 5189 EMAIL: survey@barkermonahan.com.au</small>		REF. 13948 VERSION 01 COMPUTER FILE: 3948TP.DWG DATE: 11/05/2018	

259-281 Whitehorse Road and 1A Weston Street Balwyn

Red outlined includes all the of land included in planning permit PP18/00864.

Yellow outline is the subject Road.