

7.7 Proposed removal of reserve status and sale of drainage reserve - Adjoining 68 to 110 Illawarra Road, 73 to 107 Kooyongkoot Road and 9A and 11 Reserve Road, Hawthorn

Executive Summary

Purpose

This report is to consider commencement of the statutory procedures to remove the reserve status (discontinue), take title and sell the 1.83m wide drainage reserve adjoining 68 to 110 Illawarra Road, 73 to 107 Kooyongkoot Road and 9A and 11 Reserve Road, Hawthorn.

Background

Council received a request from a property owner for the removal of reserve status (discontinuance) and sale of the drainage reserve land adjoining their property. The drainage reserve is located at the rear of 68 to 110 Illawarra Road, 73 to 107 Kooyongkoot Road and 9A and 11 Reserve Road, Hawthorn ("the Reserve").

In addition, a small part of the Reserve land south of 9A Reserve Road, Hawthorn forms part of Reserve Road. Consistent with its use, this land is proposed to be set aside as Road R1 in the proposed Plan of Subdivision.

Key Issues

- The Reserve is in the name of the original subdivider.
- The Reserve is considered by officers to be no longer required for the purpose for which it was reserved and is of little value to Council.
- The Reserve has been enclosed within many of the adjoining properties in Illawarra Road for in excess of 15 years.
- Any sale of Council land requires Council to comply with section 114 of the *Local Government Act 2020*.
- There is a Council drain and Yarra Valley Water asset located within the Reserve.
- Council's current policy provides that Council will take title to all unsold discontinued sections of Reserve.

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 relates to Council business information, being information that 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 114 of the *Local Government Act 2020* to remove the reserve status and sell the land comprising the 1.83m wide drainage reserve adjoining 68 to 110 Illawarra Road, 73 to 107 Kooyongkoot Road and 9A and 11 Reserve Road, Hawthorn, shown hatched in **Attachment 1** and as Lots 1 to 16 (both inclusive) on the proposed plan of subdivision PS849085E in **Attachment 2** ("the Reserve"), to the owners of the adjoining properties, by private treaty in accordance with Council's Discontinuance of Roads and Reserves Policy 2022 ("Council's Policy").
2. Give notice of its intention to remove the reserve status and to sell the Reserve on Council's website stating that Council proposes to remove the reserve status, take title, and sell the Reserve to the owners of the adjoining properties, by private treaty, in accordance with Council's Policy.
3. Invite both written and verbal submissions on the proposed removal of the reserve status 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 removal of the reserve status and sale in full, in part or not to proceed with the removal of reserve status 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 removal of the reserve status and land sales 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 removal of the reserve status and land sales of the Reserve to the owners of the adjoining properties by private treaty in accordance with Principles 1, 2 and 3 of Council's Policy.
7. Authorise the Chief Executive Officer, or such other person as the Chief Executive Officer approves, to commence the sale process by undertaking community engagement consistent with section 114 of the *Local Government Act 2020* for any unsold lots.
8. Note procedures will be undertaken pursuant to part 4 of the *Planning and Environment Act 1987* and section 24A of the *Subdivision Act 1988* to remove the reserve status and subdivide the Reserve in preparation for its sale and future consolidation with purchasers' main titles.
9. Notwithstanding the present intention to sell the Reserve to the adjoining property owners detailed in the report, should submissions be received from other adjoining property owners or interested parties, Council reserves the right to sell the Reserve to any other interested property owners.

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

1. Purpose

This report is to consider commencement of the statutory procedures to remove the reserve status and sell the 1.83m wide drainage reserve adjoining 68 to 110 Illawarra Road, 73 to 107 Kooyongkoot Road and 9A and 11 Reserve Road, Hawthorn, shown hatched in **Attachment 1** and as Lots 1 to 16 on the proposed plan of subdivision PS849085E in **Attachment 2** ("the Reserve").

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's Policy").

Principles 1, 2 and 3 of section 4.2.8 of Council's Policy have 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."*

Principle 2

"Council titled land will be offered at market value."

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 maybe discounted to an amount equal to adverse possession costs (estimated at \$11,000 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."

Consistent with section 4.2.7 of Council's Policy, Council will take title to all unsold lots.

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 a property owner for the removal of the reserve status and sale of drainage reserve land adjoining their property. The 1.83m wide drainage reserve is located at the rear of 68 to 110 Illawarra Road, 73 to 107 Kooyongkoot Road and 9A and 11 Reserve Road, Hawthorn, shown hatched in **Attachment 1** (“the Reserve”). The owners of 78, 82, 90 and 110 Illawarra Road and 81 and 83 Kooyongkoot Road, Hawthorn, have conditionally offered to purchase the land from the Reserve. Consistent with its Policy, it is proposed Council will take title to all unsold lots.

The proposed plan of subdivision PS849085E in **Attachment 2** has been prepared, showing the reserve proposed for sale comprising Lots 1 to 16.

In addition, a small part of the Reserve land south of 9A Reserve Road, Hawthorn forms part of Reserve Road. Consistent with its use, this land is to be set aside as Road R1 in the proposed Plan of Subdivision.

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

4. Outline of key issues/options

The Reserve is considered by officers to be no longer required for the purpose for which it was reserved and is of little value to Council. The majority of the Reserve has been occupied by the adjoining properties for in excess of 15 years, except the area comprising of Lots 5 and 6 as shown in **Attachment 2**.

Yarra Valley Water has a sewer in a section of the Reserve, and accordingly an easement for sewerage purposes will be created in favour of Yarra Valley Water over the Reserve, shown as E-2 on the proposed plan of subdivision PS849085E in **Attachment 2**.

Council has a drain within the Reserve and accordingly, a drainage easement will be created in favour of Council over the entire Reserve, shown as E-1 and E-2 on the proposed plan of subdivision PS849085E in **Attachment 2**.

A survey of the land has also identified the presence of a hiatus (or excess land) between the subdivision which created both the drainage reserve and the properties in Illawarra Road, and the adjoining subdivision which created the properties in Kooyongkoot Road. The hiatus varies in width from approximately 0.30m wide to 1.55m and is shown on the Land Status Plan in **Attachment 3**. There is no title to this land and as such Council cannot deal with it or gain title to it. If they wish, property owners in occupation of the hiatus are able to gain title to this land via either a Plan of Consolidation (based on survey) or an adverse possession claim (based on survey).

Council will be required to undertake procedures under part 4 of the *Planning and Environment Act 1987* and section 24A of the *Subdivision Act 1988* to vest the reserve in Council, remove reserve status from the land and subdivide the land into various lots in preparation for its sale and future consolidation with purchaser's main titles.

It is noted that the process to discontinue and sell the drainage reserve commenced in the latter part of 2019 and negotiations with the owners were undertaken in good faith well before the recent policy changes were adopted by Council in August 2022. As such sale consideration is being progressed under the terms of the previous policy.

5. Consultation/communication

Stakeholder engagement

Adjoining owners have also been consulted on the proposal and no objections to the proposal to remove the reserve status and sell the drainage reserve have been received to date. Six (6) property owners have made conditional offers to purchase the Reserve, in accordance with Council's former policy.

Service authorities have been consulted and no objections were received.

Internal Council departments have been consulted and no objections were received.

Statutory community engagement and consultation

The procedures under section 114 of the *Local Government Act 2020* require that Council publish a notice of its intention to remove the reserve status and sell the Reserve 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, the notice on Council's website will invite written submissions for consideration. The notice will advise any person can make a submission in relation to the proposed removal of the reserve status and sale. Furthermore, the notice will also include information advising that submitters may 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 prior to a decision being made.

In addition to the notice on Council's website, all abutting property owners will be advised of the proposal in writing and informed of the opportunity to make a submission.

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 remove the reserve status and sell the 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 removal of the reserve status and sale of the Reserve, including the execution of all relevant documentation.

6. Financial and resource implications

If Council proceeds with the removal of the reserve status and sale of the Reserve, the sale of the land will generate once off income for Council together with the ability to rate the Reserve in the future.

Whilst owners under the current Policy would also be required to meet Council's costs associated with discontinuing and selling the Reserve, in this instance it is recommended that this requirement be dispensed with, having regard to the fact that negotiations with owners to purchase the land from the Reserve were significantly progressed well before the current Council Policy came into effect.

The owners of 78, 82, 90 and 110 Illawarra Road and 81 and 83 Kooyongkoot Road, Hawthorn, have signed conditional offers to purchase the Reserve from Council for the total sale price of \$99,825.00 (inclusive of GST). The purchase price comprises the following amounts shown in Table 1:

Table 1: Land sale revenue

Lot	Property	Land Occupied	Market Value	Capped Price	Total
7	78 Illawarra	Yes 15 years +	N/A	\$11,000	\$11,000
9	82 Illawarra	Yes 15 years +	N/A	\$11,000	\$11,000
13	90 Illawarra	Yes 15 years +	N/A	\$11,000	\$11,000
15	110 Illawarra	Yes 15 years +	N/A	\$11,000	\$11,000
5	81 Kooyongkoot	No	\$32,725	N/A	\$32,725
6	83 Kooyongkoot	No	\$23,100	N/A	\$23,100
				Total	\$99,825

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

As discussed above, Council will take title to all unsold land, which can be offered for sale to abutting or occupying owners in the future at market value. Any occupiers will no longer be able to claim the land by adverse possession.

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 removal of the reserve status and sale of the Reserve is not expected to have a positive or negative impact on the community, social wellbeing or the environment.

9. Evaluation and review

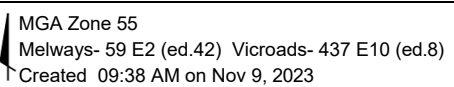
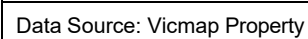
Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants, Macquarie Local Government Lawyers, and no issues have been identified.

10. Conclusion

It is considered appropriate that procedures be commenced for the removal of the reserve status and sale of the Reserve to the adjoining property owners in accordance with Council's Policy. Progressing the proposal will formalise the occupation of the Reserve by the majority of the adjoining property owners, which has prevailed for many years.

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

Report officer: Michael Hutchison, Head Strategic Property and Revenue



Co-ordinates of Plot Corners	WARNING:	Co-ordinates of Plot Corners
NW 327268,5810716	No warranty is given as to the accuracy or completeness of this map.	NE 327537,5810722
SW 327276,5810379	Dimensions are approximate.	SE 327544,5810385
MGA Zone 55	For property dimensions, undertake a Title search.	MGA Zone 55
	.	

PLAN OF SUBDIVISION UNDER SECTION 24A OF THE SUBDIVISION ACT 1988			EDITION 1		PS849085E	
LOCATION OF LAND PARISH: BOROONDARA CROWN PORTION: 2 (PART) TITLE REFERENCE: VOL.4371 FOL.009 (PART) LAST PLAN REFERENCE: TP906534X, LOT 1 POSTAL ADDRESS: (at time of subdivision) RESERVE ROAD, HAWTHORN, 3122. MGA CO-ORDINATES E: 327 410 ZONE: 55 (at approx centre of land N: 5810 570 GDA2020 in plan)			BOROONDARA CITY COUNCIL			
VESTING OF ROADS AND/OR RESERVES			NOTATIONS			
IDENTIFIER		COUNCIL/BODY/PERSON		PURPOSE OF THE PLAN: (i) TO VEST IN THE BOROONDARA CITY COUNCIL THOSE PARTS OF THE DRAINAGE RESERVE ON LP8095 CONTAINED IN VOL.4371 FOL.009 (TP906534X, LOT 1) AND SHOWN AS LOTS 1-11 & 13-16 (BOTH INCLUSIVE) AND ROAD R1 ON THIS PLAN. (ii) REMOVAL BY THE BOROONDARA CITY COUNCIL OF THE RESERVATION FROM THOSE PARTS OF THE DRAINAGE RESERVE ON LP8095 CONTAINED IN VOL.4371 FOL.009 (LOT 1 ON TP906534) AND SHOWN AS LOTS 1-11 & 13-16 (BOTH INCLUSIVE) AND ROAD R1 ON THIS PLAN. (iii) REMOVAL BY THE BOROONDARA CITY COUNCIL OF ALL EASEMENTS SET OUT IN LP8095 FROM THE LAND IN THIS PLAN. GROUNDS FOR VESTING AND REMOVAL: AS DIRECTED BY BOROONDARA CITY COUNCIL PLANNING PERMIT No.		
R1		BOROONDARA CITY COUNCIL				
NOTATIONS						
DEPTH LIMITATION DOES NOT APPLY						
SURVEY: This plan is based on survey STAGING This is not a staged subdivision. Planning Permit No. This survey has been connected to permanent marks No(s). 57, 278 In Proclaimed Survey Area No. ---						
EASEMENT INFORMATION						
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)						
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of		
E-1, E-2 E-2	DRAINAGE SEWERAGE	SEE DIAG. SEE DIAG.	THIS PLAN THIS PLAN	BOROONDARA CITY COUNCIL YARRA VALLEY WATER		
Millar Merrigan Land Development Consultants M(03) 8720 9500 R (03) 5134 8611 www.millarmerrigan.com.au survey@millarmerrigan.com.au SAI GLOBAL Quality ISO 9001		SURVEYOR'S REF: 25486S1 07/02/2023 LICENSED SURVEYOR Christopher Morelli This is not a digitally signed plan.		ORIGINAL SHEET SIZE: A3		SHEET 1 OF 3
Millar & 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		VERSION NO. 3				

