

1 Presentation of officer reports

1.1 Camberwell High School - 100A Prospect Hill Road, Canterbury - Proposed Discontinuance of Road & Consideration of submission

Executive Summary

Purpose

This report is to consider finalising the statutory procedures to:

1. Discontinue part of the 3.05m wide carriageway easement/road located within the title boundary of Camberwell High School, 100A Prospect Hill Road, Canterbury and to sell and transfer, for nominal consideration plus costs, the land to the Minister of the Crown administering the Education and Training Acts, and;
2. Consider a submission received in regard to the proposal.

Background

Camberwell High School ("the School") has expressed concerns around the safety and security of students, staff and School visitors associated with unrestricted access to its Year 7 and 8 student play and learning areas via a carriageway easement. These safety and security concerns have been exacerbated in recent years following incidents where drivers of motor vehicles have attempted to travel in a northerly direction along the carriageway easement toward Prospect Hill Road.

The School's title shows a 3.05m wide carriageway easement, refer highlighted yellow and yellow-hatched on **Attachment 1**. While shown as an easement on the School's title, Council's solicitors are of the view that the northern part of the easement, refer yellow-hatched area on **Attachment 1** with an area of 132m² (approximately), may have become a public highway for the purposes of the *Local Government Act 1989* ("the Road").

In order to improve safety and security for the School, the Victorian School Building Authority ("the VSBA"), on behalf of the School, has requested that Council discontinue the Road (shown yellow-hatched on **Attachment 1**) and transfer the land in the Road (if discontinued) to the Minister of the Crown administering the Education and Training Acts.

As a temporary measure, the VSBA had previously requested that Council urgently install bollards at the southern end of the Road to physically prevent vehicles from entering the Road. These temporary bollards were installed by Council in May 2022.

Council at its meeting held on 24 July 2023 resolved to commence the statutory procedures to discontinue and sell the Road.

Public notice of the proposal was given in The Age newspaper on 15 August 2023 and on Council's website for the duration of the 28 day submission period. The notice advised that any submissions should be received by Council by 12 September 2023 and that any submissions would be considered in line with section 223 of the *Local Government Act 1989*.

A copy of the notice, together with information outlining the proposal was also placed at either end of the Road for the duration of the submission period.

One written submission has been received.

Key Issues

- The School owns the land comprising the easement/road and Council is the responsible authority for discontinuing the Road.
- Both the School and the VSBA are seeking to have the Road discontinued over safety and security concerns.
- If the Road is discontinued, this would remove any public rights to traverse or access the land in the future.
- The Road is considered by Council officers to not be reasonably required for public access.
- The submission received objects to the proposal on the grounds that the closure of the Road would disadvantage members of the public.

Confidentiality

Confidential information is contained in **Attachment 6**, 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, having given public notice in accordance with section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* of a proposal to discontinue the 3.05m wide carriageway easement/road located within the boundary of Camberwell High School, 100A Prospect Hill, Canterbury, shown yellow-hatched in **Attachment 1**, and sell and transfer part of the carriageway easement/road shown as Lot 1 on the proposed Title Plan TP965742G in **Attachment 2** ("the Road"), to the Minister of the Crown administering the Education and Training Acts ("the Minister") by private treaty in accordance with Council's Discontinuance of Roads and Reserves Policy 2022 ("Council's Policy"), and having received and considered a submission regarding the proposal, resolves to:

1. Discontinue the Road and sell the land to the Minister by private treaty.
2. Directs that notice of the discontinuance be published in the Victoria Government Gazette.
3. Authorise the Chief Executive Officer, or any such person that the Chief Executive Officer approves, to sign all necessary documentation to sell the land from the Road to the Minister for the sum of \$1.00 plus associated costs in accordance with Principle 4 of Council's Policy.
4. Note consideration of the submission received and write to the submitter advising them of Council's decision and the reason for that decision.

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

1. Purpose

This report is to consider finalising the statutory procedures to:

1. Discontinue part of the 3.05m wide carriageway easement/road (“the Road”) located within the title boundary of Camberwell High School, 100A Prospect Hill Road, Canterbury (“the School”) and to sell and transfer the land to the Minister of the Crown administering the Education and Training Acts (“the Crown”); and
2. Consider a submission received in regard to the proposal.

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”). Principle 4 of section 4.2.8 of Council’s Policy has been used in determining the purchase price of the Road:

Principle 4

“In exceptional circumstances Council may consider a price negotiation on the market value. Exceptional circumstances will be determined by Council in Council’s absolute discretion.”

In this instance, the section of carriageway easement/road is within the School’s title. The discontinuance process would remove the section of 3.05m wide carriageway easement/road from the School’s title and vest it in Council. As part of the process, Council would be required to sell and transfer the discontinued road land back to the School. This is an unusual and exceptional circumstance that Council has been asked to facilitate on behalf of the School by the Victorian School Building Authority (“the VSBA”) for reasons of safety and security.

Council officers have independently considered the request and the results of this assessment by Council officers, which are wider in character than the basis for the School’s request, are set out in this report.

The reasons for the proposed discontinuance, in the opinion of Council officers, are:

- the road is not reasonably required for public use/access;
- the discontinuance, if implemented, will enhance public health, safety, security and wellbeing within the environs of the School;
- the discontinuance, if implemented, will provide for the fair, orderly, economic and sustainable use and development of land; and
- the discontinuance, if implemented, will provide good governance in the Council’s municipal district for the benefit and wellbeing of the municipal community.

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 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 has in recent years discussed with representatives of the VSBA the appropriateness and future use of both the 3.05m wide right of way, shown highlighted pink on **Attachment 1**, and the adjoining 3.05m wide carriageway easement, shown highlighted yellow and yellow-hatched on **Attachment 1** which are contained within the title boundary of Camberwell High School (“the School”).

This report focuses on part of the latter carriageway easement (shown yellow-hatched on **Attachment 1**).

The School’s title, shown as Lot 1 in Plan of Subdivision PS823781D in **Attachment 3** contains a 3.05m wide carriageway easement (shown E-4 and highlighted green) along its eastern boundary.

Whilst shown as an easement on title, Council’s solicitors are of the view that the northern part of the easement, shown yellow-hatched on **Attachment 1**, with an area of 132m² (approximately), may have already become a public highway (“the Road”) for the purposes of the *Local Government Act 1989*. The only way to remove that public highway status from the land would be for Council to formally discontinue the Road.

The north/south section of easement has been constructed in concrete with the southern part of the easement adjacent to the open right of way being used for car parking. The northern, yellow-hatched section presents as both part of the School grounds and as a pedestrian walkway connecting Prospect Hill Road with the open right of way to the south. Vehicle access from or to Prospect Hill Road is not possible due to both the lack of a vehicle crossover and pedestrian safety fencing along the Prospect Hill Road frontage.

Council at its meeting held on 24 July 2023 resolved to commence the statutory procedures to discontinue and sell the Road.

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

4. Outline of key issues/options

School safety

The School has expressed concerns around the safety and security of students, staff and School visitors associated with unrestricted access to its Year 7 and 8 student play and learning areas via the Road at the Prospect Road Hill end. These safety and security concerns have been exacerbated in recent years following a number of incidents where drivers of motor vehicles have attempted to travel in a northerly direction along the Road toward Prospect Hill Road. As this is not possible, there have been vehicles that have become stuck and an instance where one needed to be towed out.

In order to improve safety and security, the VSBA on behalf of the School has requested that Council discontinue the Road (shown yellow-hatched on **Attachment 1**).

As a temporary measure, in early 2022, the VSBA requested that Council urgently install bollards at the southern end of the Road to physically prevent vehicles from entering the Road. Following review by Council's Traffic and Transport department, temporary bollards were installed by Council in May 2022.

If the Road is discontinued, it would enable the School to install permanent barriers and fencing along Prospect Hill Road to prevent both public pedestrian and vehicular access and to improve safety and security for students and teachers alike and to otherwise exercise full and unrestricted rights of ownership and control over the land currently comprising the Road.

Traffic movement survey

Detailed surveys undertaken on a school day (Thursday 3 December 2020) and a non-school day (Saturday 12 December 2020) confirmed high use by the school population and relatively low use by the general public.

Table 1: Movement survey summary

Location	Day	Time	Pedestrians	Cyclists	Vehicles
At Prospect Hill Rd	Thursday, 3 Dec 2020	8 - 9am	325	5	0
		2.30 - 3.30pm	295	22	0
		7am to 7pm	862	27	0
	School day				
	Saturday, 12 Dec 2020	9.30 - 10.30am	15	3	0
		2.15 - 3.15pm	13	1	0
7am to 7pm		57	8	0	
Weekend					
Behind the units at 3 Byron St	Thursday, 3 Dec 2020	8.15 - 9.15am	127	16	12
		2.30-3.30pm	168	55	7
		7am to 7pm	579	82	41
	School day				
	Saturday, 12 Dec 2020	9.30 - 10.30am	13	4	3
		1.15 - 2.15pm	12	2	4
7am to 7pm		54	12	13	
Weekend					

Council's Traffic and Transport Department has outlined that this data:

- Indicates during the weekend, it appears the majority of pedestrians and cyclists enter or exit the subject section of Road from Prospect Hill Road and then continue their way south towards Riversdale Park.
- Demonstrates the very high school use on weekdays provides all the more reason to avoid/prevent members of the public from walking though the location.

Although carried out in late 2020, Council officers believe the data is still presently relevant. Council officers concur with the School's view that unrestricted public access to the students' play and learning areas within the School via the Road is undesirable and unsafe.

Additionally, given the amount of demonstrated public use, the nature and extent of that use, the presence of alternative pedestrian and cyclist routes in the area via Byron Street to the east and the Anniversary Trail to the west, Council officers are of the view that the Road is not reasonably required for public use/access and is otherwise amenable to formal discontinuance.

While there is an alternative route available to those pedestrians currently using the Road subject to this report, the existence of that alternative route does not on its own justify a decision to support the discontinuance. It is a matter Council can consider along with other relevant considerations when determining whether the road is reasonably required for public access.

5. Consultation/communication

Stakeholder engagement

The VSBA, on behalf of the School, has agreed to purchase the land from the Road for the sum of \$1.00 and has agreed to meet Council's costs associated with undertaking the proposal in accordance with Council's Policy.

Service authorities have been consulted and no objections were received. None of the authorities have any assets within the Road nor have any requirements over the land.

Internal Council departments have been consulted and no objections were received. Council does not have any assets in the Road or requirements over the land.

Statutory community engagement and consultation

Public notice of the proposal was given in The Age newspaper on 15 August 2023 and on Council's website for the duration of the 28 day submission period. The notice advised that any submissions should be received by Council by 12 September 2023 and that any submissions would be considered in line with section 223 of the *Local Government Act 1989*.

A copy of the public notice, together with information outlining the proposal were distributed to the owners and occupiers of 136 properties in the vicinity of the School.

In addition, a copy of the public notice and information outlining the proposal was placed at either end of the Road for the duration of the submission period.

Submission

A property owner in Byron Street has lodged a written submission concerning the proposal. A copy of the submission has been circulated to Councillors separately in **Confidential Attachment 6**.

The submitter has requested to be heard in support of their submission. The submitter is opposed to the proposal for the following reasons:

The road is reasonably required for public use /access

The submitter is of the view that a reasonable number of members of the public use the Road and will be distinctly disadvantaged along with some students cycling or walking to and from School.

Public Health will be disadvantaged

The submitter cannot see any public health, safety, security or wellbeing benefits stemming from the closure. The submitter contends that some people, particularly less able people, will be disadvantaged by the closure.

Closure will not allow for sustainable use

The submitter states that whilst the School will benefit from acquiring the land, removal of the Road as a useful walkway from the public is unfair and does not allow for sustainable use such as walking and cycling by the public.

The submitter notes that the School's land on the eastern side of the Road is not fenced. The submitter contends that the School's concerns would be addressed if it used the pedestrian overpass from the Year 7 and 8 building to the main building and if a fence were constructed on the eastern side of the Road.

Proposal to benefit School only

The submitter argues that whilst closure of the Road would benefit the School, this would be at the expense of the public who value this asset.

In summary, the submitter is of the view that the Road is wanted by the public and that it is possible for it to remain open in conditions similar to those now existing.

Officer comments on the submission

As indicated above, the School has expressed concerns around the safety and security of students, staff and School visitors associated with unrestricted access to its Year 7 and 8 student play and learning areas via the Road at the Prospect Hill Road end. Erection of a fence on the eastern side of the Road and requiring school pedestrians to use the overpass will restrict the ease and flow of students and staff traversing between buildings and open space on either side of the Road. The VSBA advise that a gate could be installed, but this will need to be manned and locked at all times on both sides which is not a practical or sustainable solution. The VSBA conclude this will require more staffing resources that take away from delivery of education.

Alternate Routes

As discussed earlier in this report, detailed pedestrian vehicle surveys undertaken over a 12 hour period during a school day and a Saturday (non-school day) in December 2020 confirmed high use by the school population and relatively low use by the general public.

On a school day a total of 862 pedestrians were recorded and on a Saturday, a non-school day, this figure reduced to 57 which would reflect public access.

For these members of the public, alternative access routes are available with the most convenient being via Byron Street to the east at approximately 50m or use of the Anniversary Trail to the west. Refer **Attachment 5** showing alternate routes.

With respect to school children bike riding, a total of 22 were recorded using the Road between 2:30pm to 3:30pm. The School has advised that regulated access from Prospect Hill Road, in the location under consideration to be discontinued, during school pick up and drop off times is proposed to be provided and this would also serve to allow for bike access for students. Alternatively, use can be made of Byron Street a short distance away or preferably the Anniversary Trail along the western boundary of the school which allows for good continuous access.

As discussed above, given the amount of demonstrated public use, the nature and extent of that use, the availability of alternative pedestrian and cycle routes in the area via Byron Street to the east and the Anniversary Trail to the west, Council officers are of the view that the Road is not reasonably required for public use/access and is otherwise amenable to formal discontinuance. In addition, the submitter's alternatives to do not adequately address the School's safety concerns.

6. Financial and resource implications

Council has been requested to facilitate the process to discontinue part of the carriageway easement that may have become a public highway (shown as yellow-hatched in **Attachment 1** and as Lot 1 on the proposed Title Plan TP965742G in **Attachment 2**) on behalf of the School, which currently forms part of the School's main title.

Notwithstanding the current situation, if the Road is discontinued the land will then vest in Council.

As a result, it will be necessary to sell and transfer the land forming the discontinued Road back to the School/the Crown. Council's legal advice recommends this approach as this part of the carriageway easement may have become a public highway for the purposes of the *Local Government Act 1989* and the only way to remove that public highway status from the land would be for Council to formally discontinue the Road.

All of Council's associated costs with the proposed discontinuance and transfer will be met by the VBSA. These are currently estimated to be in the order of \$26,100.

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 does not give rise to any social or environmental issues.

9. Evaluation and review

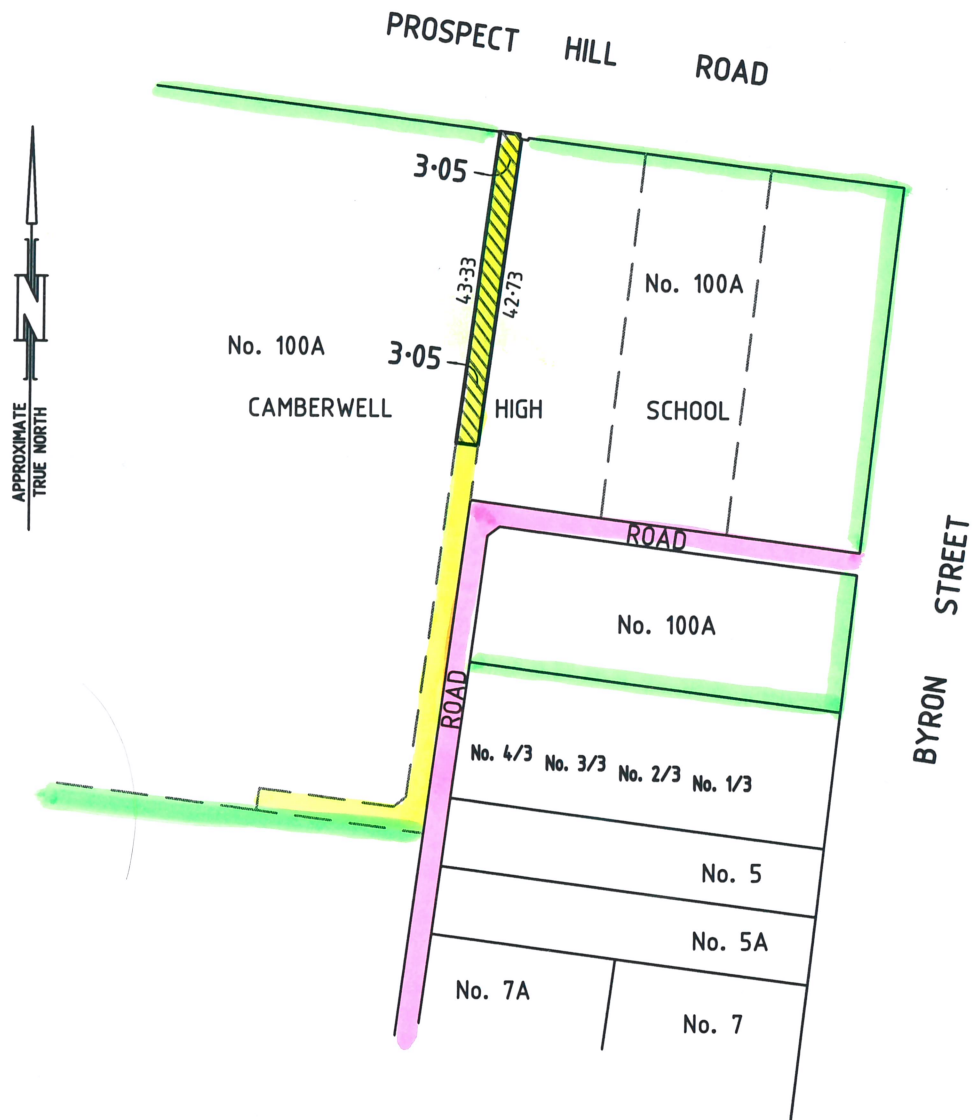
Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants Macquarie Local Government Lawyers and no issues have been identified.

10. Conclusion

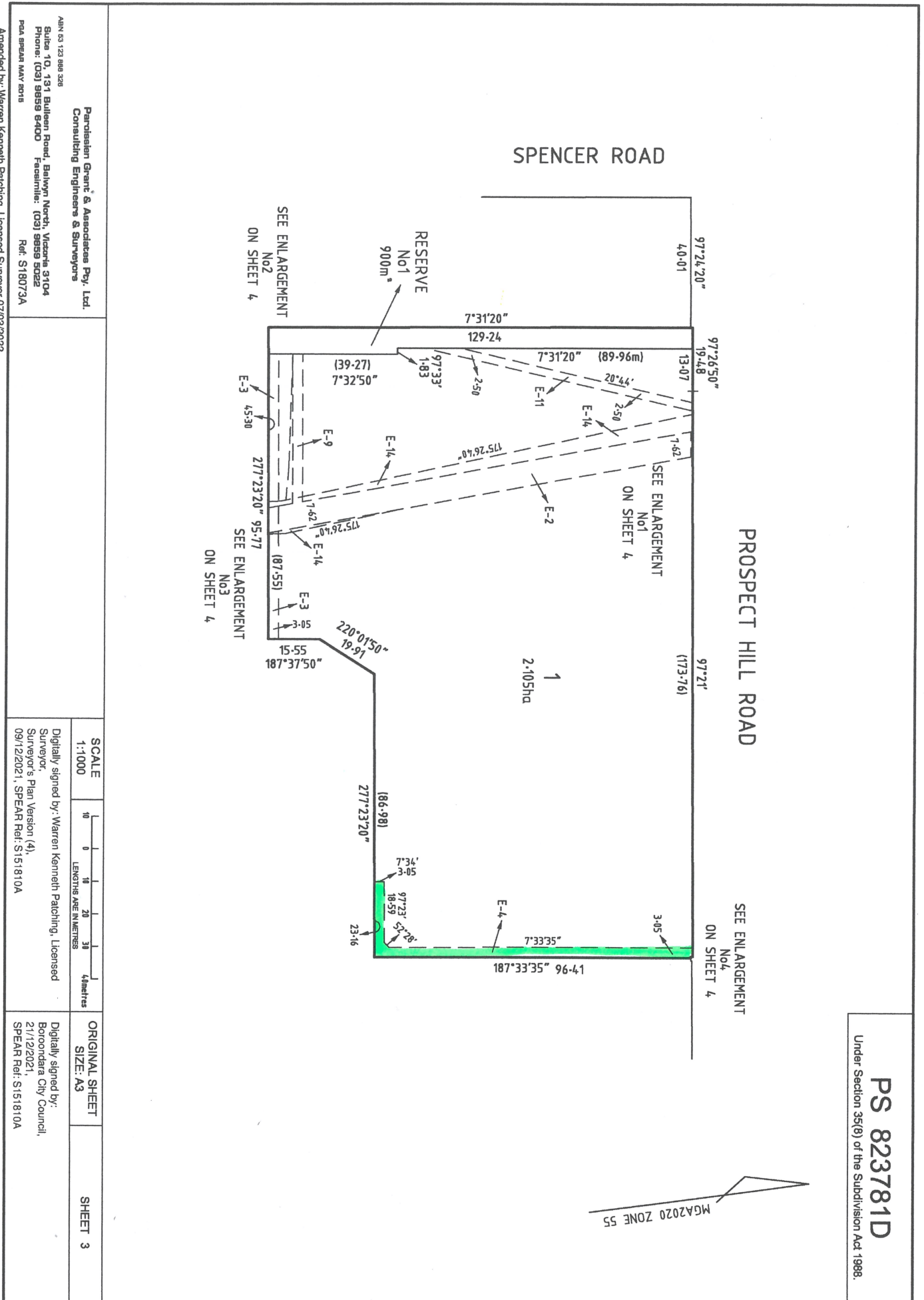
It is considered by officers that the Road is not reasonably required as a 'road' for public use and as such (together with other reasons set out in this report) its discontinuance and sale to the Crown (Minister administering the Education and Training Acts) in accordance with Council's *Discontinuance of Roads and Reserves Policy 2022*, is recommended.

Manager: Amy Montalti, Chief Financial Officer

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

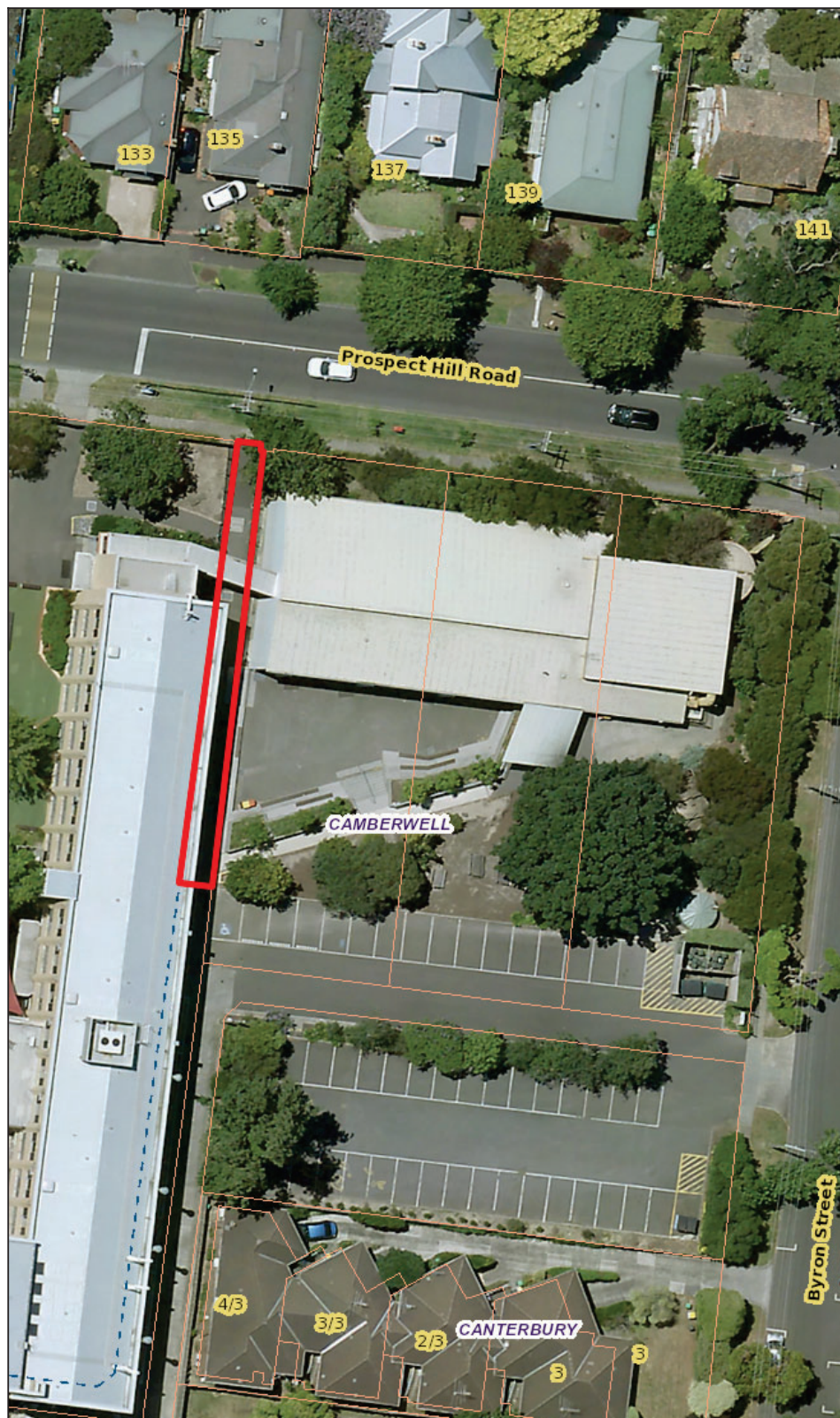


TITLEPL;DWG



Camberwell High School

Proposed section for discontinuance



KEY

Multi Assessment

Multi Lot

Parcel

Easements

— Easement <10m

— Easement > 10m

— Easement

— Primary Road Alignment

— Proposed Easement < 10m

— Proposed Easement > 10m

— Proposed Easement

— Proposed Freeway Alignment

Road Names - Major

Road Names - Minor

Property

Roads - Major

Suburbs

Property

Railway Stations

Railway Line

Natural Waterways

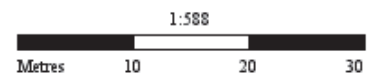
— Other Waterways

— Yarra River

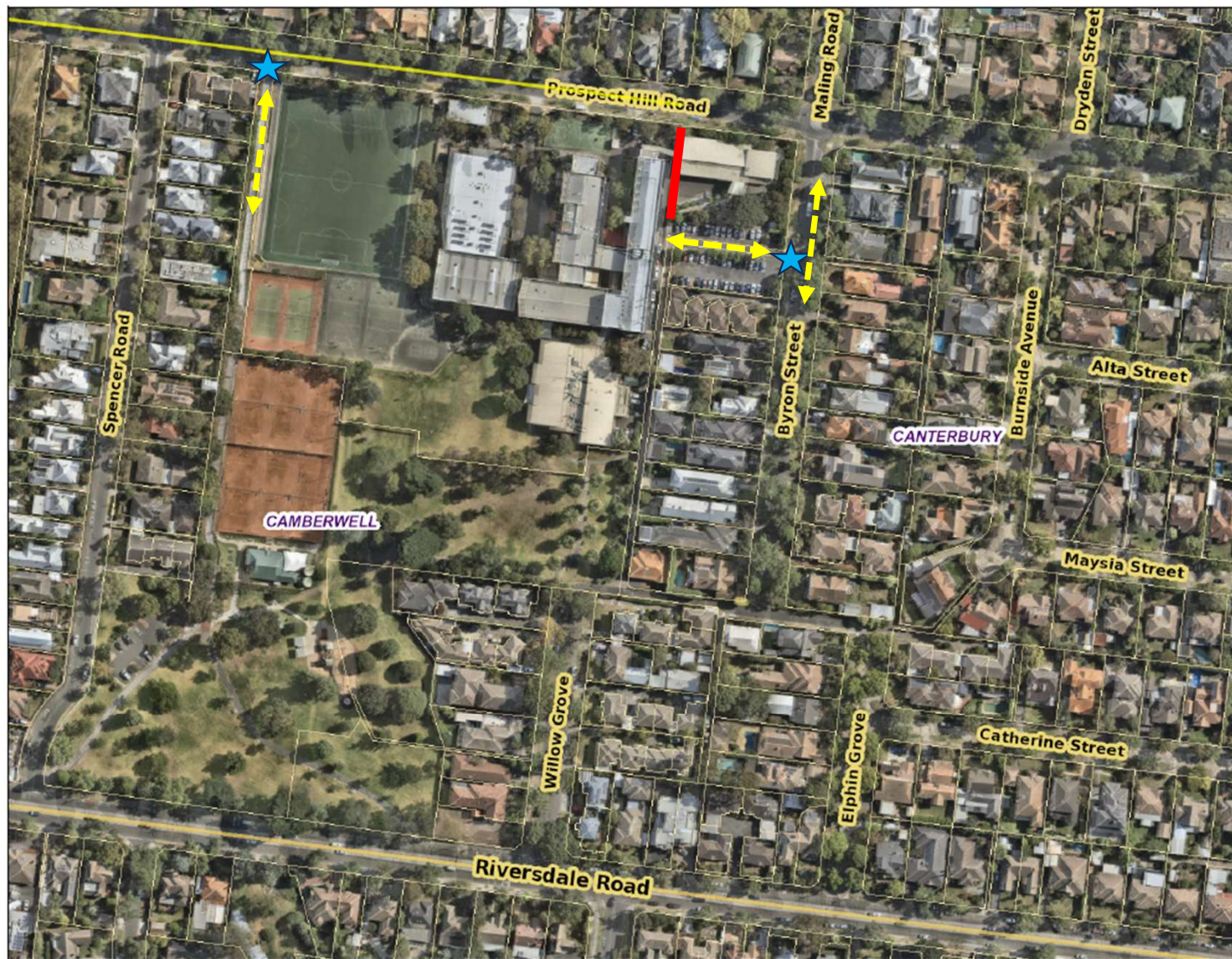
Melb Water Channel

— Other Waterways

— Yarra River



Alternative routes



KEY

Road Names - Major

Road Names - Minor

Property

Roads - Major

Suburbs

Property

Railway Stations

Area proposed for discontinuance and transfer

Alternate routes



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