

# SERVICES DELEGATED COMMITTEE



## AGENDA

(Open to the public)

**6.30pm, Monday 8 April 2024**

Council Chamber, 8 Inglesby Road, Camberwell

Date of Issue: 5 April 2024

Please note: No audio, video, photographic or any other recording of proceedings at Council or Delegated Committee meetings is permitted without written authority from Council.

## Order of Business

- 1 Adoption and confirmation of the minutes of the Services Delegated Committee meeting held on 12 February 2024**
- 2 Declaration of conflict of interest of any councillor or council officer**
- 3 Presentation of officer reports**
  - 3.1 Proposed removal of reserve status and sale of drainage reserve - Adjoining 15 and 19 Gardiner Road, Hawthorn
- 4 General business**
- 5 Urgent business**
- 6 Confidential business**
- 7 Close of meeting**

**Table of contents**

3 Presentation of officer reports .....3

3.1 Proposed removal of reserve status and sale of drainage reserve - Adjoining  
15 and 19 Gardiner Road, Hawthorn .....3

### 3 Presentation of officer reports

#### 3.1 Proposed removal of reserve status and sale of drainage reserve - Adjoining 15 and 19 Gardiner Road, Hawthorn

##### Executive Summary

###### Purpose

This report is to consider finalising the statutory procedures to remove reserve status (discontinue) and sell the 0.91m wide drainage reserve adjoining 15 and 19 Gardiner Road, Hawthorn, including the consideration of a submission received to the proposal.

###### Background

Council received a request from the owner of 19 Gardiner Road, Hawthorn, for the removal of reserve status and sale of the drainage reserve adjoining that property and 15 Gardiner Road ("the Reserve").

Council at its meeting held on 26 June 2023 resolved to commence the statutory procedures to remove the reserve status and sell the Reserve.

Notice of the proposal was given on Council's website on 7 July 2023 advising that any submissions should be received by Council by 10 August 2023 and that any submissions would be considered in line with section 223 of the *Local Government Act 2023*.

One written submission has been received.

The matter was presented to the Services Delegated Committee on 24 February 2024 and was deferred. Further enquiries have since been made to investigate the feasibility of including 15 Gardiner Road in the proposed sale process. During these investigations, it was found that a hiatus exists which demonstrates that 15 Gardiner Road is separated from the Reserve by the hiatus, part of which is occupied by 19 Gardiner Road.

Council's consultants, Macquarie Local Government Lawyers, have formed the view that the presence of the hiatus removes the option of Council dividing the Reserve land equally between the two abutting properties, or progressing a sale as one parcel to the owner of 15 Gardiner Road given 15 Gardiner Road does not abut the Reserve. As such, it is recommended the proposal proceed to discontinue and sell the discontinued Reserve land to 19 Gardiner Road, Hawthorn.

###### Key Issues

- The Reserve is in the name of Council.
- 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 19 Gardiner Road, Hawthorn, for in excess of 15 years.
- The property at 15 Gardiner Road, Hawthorn has no abuttal to the Reserve as a hiatus exists between this property and the Reserve.
- It is proposed to discontinue and sell the discontinued Reserve land to 19 Gardiner Road, Hawthorn.

- Any sale of Council land requires Council to comply with section 114 of the *Local Government Act 2020*.
- There are no Council or service authority assets located within the Reserve.

### Confidentiality

Confidential information is contained in **Attachments 5, 6 and 7**, as circulated in the confidential section of the agenda attachments. The information in these attachments 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, having given public notice of its intention to remove reserve status from the 0.91m wide drainage reserve adjoining 19 Gardiner Road, Hawthorn, shown hatched in **Attachment 1** ("the Reserve") and to sell part of the Reserve shown as Lot 1 on the proposed Plan of Subdivision PS913924G in **Attachment 2**, resolves to:

1. Remove reserve status from the Reserve and sell part of the Reserve shown as Lot 1 in the proposed Plan of Subdivision PS913924G to the owner of 19 Gardiner Road, Hawthorn, by private treaty in accordance with Council's Discontinuance of Roads and Reserve Policy 2022.
2. Authorise the Chief Executive Officer or any such person that the Chief Executive Officer approves, to sign all necessary documentation for removal of reserve status from the Reserve and for the sale of the land in Lot 1 in the proposed Plan of Subdivision PS913924G to the owner of 19 Gardiner Road, Hawthorn, for the sum of \$144,980.00 (inclusive of GST), in accordance with Principle 2 of Council's Discontinuance of Roads and Reserve Policy 2022.
3. Note that 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 (discontinue) reserve status and subdivide the land from the Reserve.
4. Note consideration of the submission received and write to the submitter advising them of Council's decision and the reason for that decision.
5. Note public notice was given of its intention to remove the reserve status from the 0.91m wide drainage reserve adjoining 19 Gardiner Road, Hawthorn, shown hatched in **Attachment 1** ("the Reserve") and to sell part of the Reserve shown as Lot 1 on the proposed Plan of Subdivision PS913924G in **Attachment 2**.

---

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

---

## **1. Purpose**

This report is to consider finalising the statutory procedures to remove reserve status from (discontinue) and sell the 0.91m wide drainage reserve adjoining 19 Gardiner Road, Hawthorn, including the consideration of a submission received 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 2 of section 4.2.8 of Council's Policy has been used in determining the purchase price of the Reserve.

### *Principle 2*

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

Under Council's Policy, the market value is as determined by Council's contract valuers. The valuation 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 the owner of 19 Gardiner Road, Hawthorn, for the removal of reserve status and sale of the drainage reserve adjoining that property ("the Reserve") shown hatched in **Attachment 1** and as Lot 1 on the proposed plan of subdivision PS913924G in **Attachment 2**. See **Attachment 3** for an aerial view.

Council at its meeting held on 26 June 2023 resolved to commence the statutory procedures to discontinue and sell the Reserve. The matter was presented to the Services Delegated Committee on 24 February 2024 and was

deferred pending further information. Council's consultants, Macquarie Local Government Lawyers, have since further investigated the feasibility of including 15 Gardiner Road in the proposed sale process.

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

##### Reserve

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 section of Reserve shown as Lot 1 on PS9139924G in **Attachment 2** has been occupied by the adjoining property at 19 Gardiner Road, Hawthorn, for in excess of 15 years. It is noted that the Reserve is Council titled land and cannot be claimed by adverse possession.

There are no Council or service authority assets located within the Reserve. 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 remove reserve status from the land and subdivide the land from the rest of the drainage reserve in preparation for sale and proposed future consolidation with the title of 19 Gardiner Road, Hawthorn.

##### Hiatus

The presence of a hiatus has been recently highlighted to Council by its consultants, Macquarie Local Government Lawyers. **Attachment 4** contains a Plan of Survey which shows:

- 19 Gardiner Road occupies all of the Reserve as well as part of the hiatus (tapering from 0.24m at the southern end to 0.09m at the northern end).
- 15 Gardiner Road occupies the remainder of the hiatus bordering the eastern boundary (tapering from 0.19m at the southern end to 0.21m at the northern end (and none of the Reserve)).

The surveyor engaged to undertake the plan has advised that:

- the dividing fence is situated more or less in the middle of the hiatus.
- 15 Gardiner Road occupies 11.9m<sup>2</sup> of the hiatus and 19 Gardiner Road has 9.6m<sup>2</sup>.
- The boundary fence appears to have been constructed approximately 15 years ago.
- Consequently, both properties appear to have accrued possessory rights over their respective parts of the hiatus.

Council's consultants, Macquarie Local Government Lawyers have formed the view that the presence of the hiatus removes the option of Council dividing the Reserve land equally between the two abutting properties (either latitudinally or longitudinally), or as one parcel to the owner of 15 Gardiner Road as 15 Gardiner does not abut the Reserve. Rather, 15 Gardiner Road is separated from the Reserve by the hiatus, part of which is occupied by 19 Gardiner Road.

The surveyors would normally inform Council's consultants, Macquarie Local Government Lawyers, if they suspect that a hiatus may exist. In this instance, this did not occur due to staff changes within the survey team.

Both owners have been apprised of the presence of the hiatus and the fact that Council's powers do not extend to this land and that they would need to deal directly with Land Use Victoria to obtain title to this land if they so desire.

#### Inspection of Reserve

The Reserve that is enclosed within 19 Gardiner Road was inspected on 4 March 2024. The Reserve contains vegetation. Site inspection photographs are included in **Confidential Attachment 7**.

### **5. Consultation/communication**

#### Stakeholder engagement

The owner of 19 Gardiner Road, Hawthorn, has made a conditional offer to purchase the Reserve, in accordance with Council's Policy. The owner has also agreed to meet Council's costs associated with undertaking the removal of the reserve status and sale of the Reserve.

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

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

#### Statutory community engagement

Public notice of the proposal was given on Council's website on Friday 7 July 2023, inviting written submissions for consideration and advising submitters that they 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, the two abutting property owners at 15 and 19 Gardiner Road, Hawthorn, were advised of the proposal in writing and informed of the opportunity to make a submission.

#### Submission

The owner of 15 Gardiner Road has lodged a written submission in regard to the proposal. A copy of the submission has been provided in **Confidential Attachment 5**.

In summary, the submission received expresses an interest in acquiring the land proposed for sale.

#### Comments on the submission

Following the Services Delegated Committee meeting on 24 February 2024, Council's consultants, Macquarie Local Government Lawyers, confirmed with the submitter their interest in participating in the proposed sale process. Subsequent to this, the knowledge of the hiatus was provided to Macquarie Local Government Lawyers, and this was then communicated to the submitter from 15 Gardiner Road as well as the property owner of 19 Gardiner Road.

As stated above, the existence of the hiatus removes the option of dividing the Reserve land, or selling it as one parcel to the owner of 15 Gardiner Road as 15 Gardiner Road does not abut the Reserve. Rather, 15 Gardiner Road is separated from the Reserve by the hiatus, part of which is occupied by 19 Gardiner Road. Both owners have been informed of the presence of the hiatus.

## 6. Financial and resource implications

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

The owner of 19 Gardiner Road, Hawthorn, has signed a conditional offer to purchase the Reserve from Council for the sum of \$144,980.00 (inclusive of GST). The purchase price comprises the following amounts shown in Table 1:

*Table 1: Land sale revenue*

Item	Amount (GST inclusive)
Land sale price	\$124,740.00
Reimbursement of Council's costs	\$20,240.00
<b>Total</b>	<b>\$144,980.00</b>

See **Confidential Attachment 6** for a copy of the valuation report. The valuers have advised that there has not been any significant market movement since the date of valuation based on the limited market evidence available.

## 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 procedures be finalised for the removal of the reserve status and sale of the Reserve to the adjoining property owner at 19 Gardiner Road, Hawthorn, in accordance with Council's Policy. Progressing the proposal will formalise the occupation and use of the Reserve by the property at 19 Gardiner Road, which has prevailed for many years. The presence of the hiatus removes the option of Council dividing the Reserve land equally between the two abutting properties or progressing a sale as one parcel to the owner of 15 Gardiner Road.

**Manager:** Sapphire Allan, Acting Chief Financial Officer

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



Data Source: Vicmap Property

0 5 10 15 20 25 30 35 40 45 50m  
Scale of Metres (1:800)

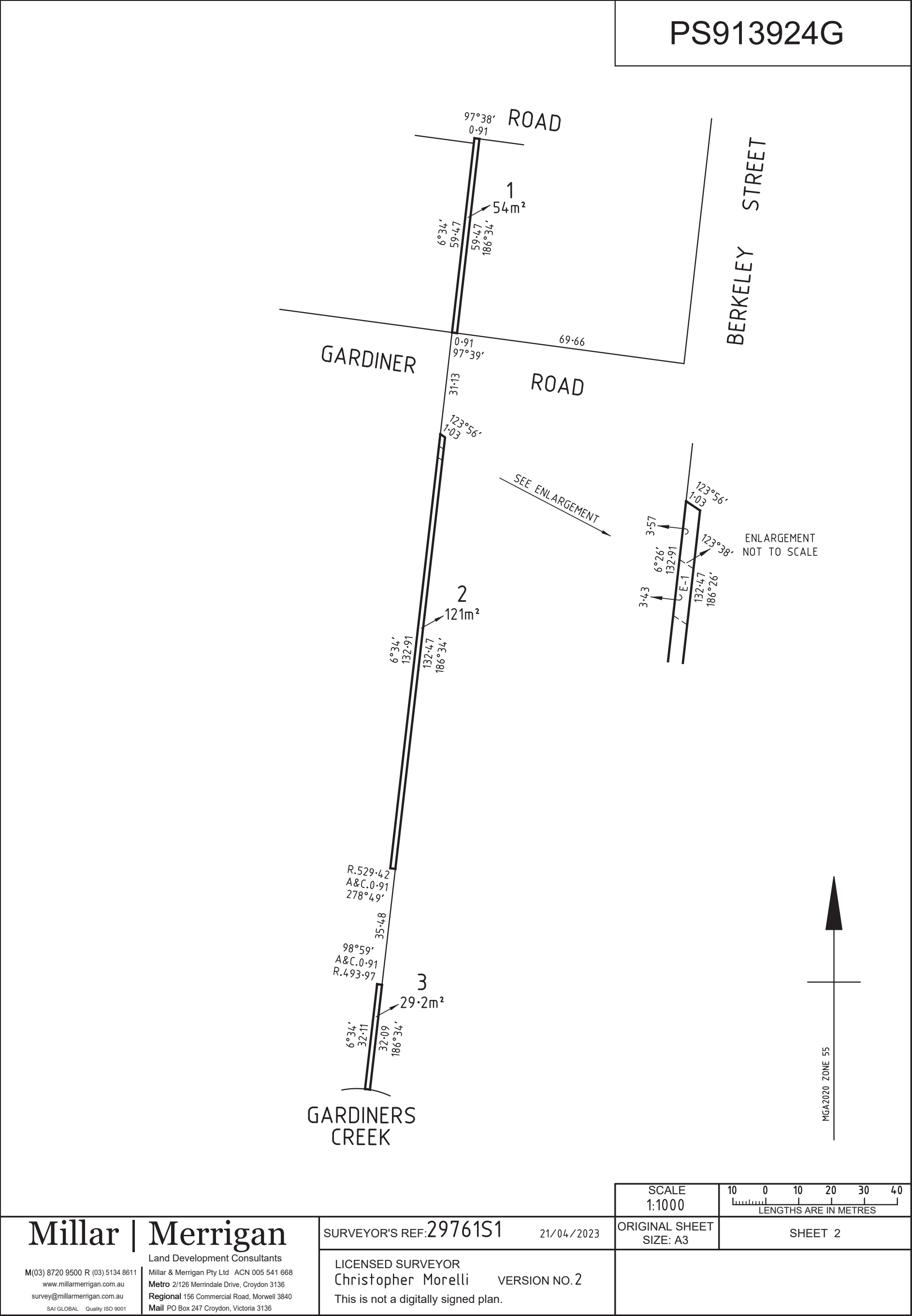
MGA Zone 55  
Melways- 59 D2 (ed.42) Vicroads- 437 E10 (ed.8)  
Created 03:05 PM on Aug 19, 2022

Co-ordinates of Plot Corners  
NW 327059,5810734  
SW 327063,5810554  
MGA Zone 55

**WARNING:**  
No warranty is given as to the accuracy or completeness of this map.  
Dimensions are approximate.  
For property dimensions, undertake a Title search.

Co-ordinates of Plot Corners  
NE 327202,5810737  
SE 327206,5810557  
MGA Zone 55

PLAN OF SUBDIVISION UNDER SECTION 24A OF THE SUBDIVISION ACT 1988			EDITION 1		PS913924G	
LOCATION OF LAND  PARISH:                   BOROONDARA   CROWN PORTION:        4 (PART)  TITLE REFERENCE:       VOL.11569 FOL.141  LAST PLAN REFERENCE: TP947581G LOT 1  POSTAL ADDRESS:       GARDINER ROAD (at time of subdivision)       HAWTHORN, 3122  MGA CO-ORDINATES    E:    327 095                    ZONE: 55 (at approx centre of land   N:   5810 630                    GDA2020 in plan)			BOROONDARA CITY COUNCIL			
VESTING OF ROADS AND/OR RESERVES			NOTATIONS			
IDENTIFIER	COUNCIL/BODY/PERSON		PURPOSE OF THE PLAN: (i) REMOVAL BY THE BOROONDARA CITY COUNCIL OF THE RESERVATION FROM THOSE PARTS OF THE DRAINAGE RESERVE ON LP6220 CONTAINED IN VOL.11569 FOL.141 AND SHOWN AS LOTS 1, 2 & 3 ON THIS PLAN. (ii) REMOVAL BY BOROONDARA CITY COUNCIL OF ALL EASEMENTS SET OUT IN LP6220 & TP947581G FROM LOTS 1, 2 & 3 ON THIS PLAN.  GROUNDS FOR REMOVAL: AS DIRECTED BY BOROONDARA CITY COUNCIL PLANNING PERMIT No.   SOME DETAILS HAVE BEEN EXAGGERATED FOR CLARITY			
NIL	NIL					
NOTATIONS						
DEPTH LIMITATION    DOES NOT APPLY						
SURVEY:    Lot 1 on 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). 58, 102  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	SEWERAGE	SEE DIAGRAM	THIS PLAN	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: 29761S1                   21/04/2023  LICENSED SURVEYOR Christopher Morelli                    VERSION NO.2 This is not a digitally signed plan.		ORIGINAL SHEET SIZE: A3	SHEET 1 OF 2	



## Aerial view





