

7.3 Proposal to take title to land remaining unsold from a previously discontinued road - Rear 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew

Executive Summary

Purpose

This report is to consider a proposal for Council to take title to the land remaining unsold from a previously discontinued road at the rear of 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew, shown in **Attachment 2** as Lots 2, 3, 5, 6, 9, 10, 11, 12, 13, 14, 17 and 18 ("the Land").

Background

Council discontinued the 3.05m wide road at the rear of 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew in two separate discontinuances in July 1999 and May 2000. The discontinued road is shown hatched in **Attachment 1**.

None of the land from the discontinued road was sold at that time.

In 2011 Council canvassed the possible sale of the remaining unsold Land. As a result of these negotiations, four (4) lots were sold.

In 2022, Council again canvassed the possible sale of the remaining unsold lots, in accordance with Council's current policy. These recent negotiations have resulted in none of the property owners expressing an interest in acquiring any land.

At this time, property owners were informed of Council's intention to take title to any unsold Land, consistent with the current Discontinuance of Roads and Reserves Policy 2022. Further, property owners have been informed that as a result of this action, they would be precluded from pursuing an application at Land Use Victoria for title to the Land via adverse possession.

It is considered that owners have been provided with ample opportunity to decide over the course of negotiations whether or not to acquire the Land (or alternatively pursue an application to Land Use Victoria for title via adverse possession) and that Council should now proceed to uphold its intention to take title to the unsold Land.

Key Issues

- The Land is in the name of the original subdivider.
- The Land has been enclosed within the adjoining properties for in excess of 15 years.
- Following consultation and negotiations with the adjoining property owners on three occasions over several years, 12 parcels of Land remain unsold.
- Council's current policy provides that Council will take title to all unsold discontinued sections of road.
- Although it was not Council's policy to take title to unsold land when the road was originally discontinued, property owners were informed of this proposed action, and the consequence of this action, during the course of recent negotiations in 2022.
- Future sales of Land will be at market value.

Officers' recommendation

That Council resolve to:

1. Take title to the Land remaining unsold from the previously discontinued road at the rear of 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew, shown as Lots 2, 3, 5, 6, 9, 10, 11, 12, 13, 14, 17 and 18 on Title Plan TP951943Y in **Attachment 2** and as annexed to the minutes ("the Land"), in accordance with clause 4.2.7 of Council's Discontinuance of Roads and Reserves Policy 2022 ("Council's Policy").
2. Authorise the Chief Executive Officer, or such other person as the Chief Executive Officer approves, to sign all necessary documentation associated with Council taking title to the unsold Land, including making application to Land Use Victoria for title to the unsold Land.
3. Authorise the Chief Executive Officer, or such other person as the Chief Executive Officer approves, to commence the sale process under section 114 of the *Local Government Act 2020* for any unsold lots.

Responsible director: Phillip Storer, Chief Executive Officer

1. Purpose

This report is to consider a proposal for Council to take title to the land remaining unsold from a previously discontinued road at the rear of 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew, shown in **Attachment 2** as Lots 2, 3, 5, 6, 9, 10, 11, 12, 13, 14, 17 and 18 (“the Land”).

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”), specifically clause 4.2.7 which provides that 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 discontinued the 3.05m wide road at the rear of 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew in two separate discontinuances in July 1999 and May 2000. The discontinued road is shown hatched in **Attachment 1**. The land at the rear of 56 First Avenue had already been acquired by adverse possession prior to the discontinuance and was not included as part of the process. None of the land from the discontinued road was sold at that time.

Since 2000, the owner of 28 Maitland Avenue, Kew acquired the former road at the rear of that property by adverse possession.

In 2011 Council canvassed the possible sale of the remaining unsold Land. As a result of these negotiations, the Land shown as Lots 1, 4, 15, 16 on **Attachment 2** were sold.

Following an enquiry from an abutting property owner in early 2022, Council again canvassed the possible sale of the remaining unsold Lots, in accordance with Council’s current policy. These recent negotiations have resulted in none of the property owners expressing an interest in acquiring any land.

It is noted that the owners of 48 First Avenue and 14 Maitland Avenue have confirmed that they have recently made application to Land Use Victoria for title to the Land in Lots 7 and 8 in Title Plan TP 95143Y, shown in **Attachment 2** via adverse possession.

These lots will be excluded from Council's proposal to take title to the Land, as will be any other lots if owners provide written evidence that they have made similar applications prior to Council making its application to Land Use Victoria for title to the Land.

4. Outline of key issues/options

When the road was formally discontinued, easement rights were provided for Council drainage and Yarra Valley Water assets.

Following consultation and negotiations with the adjoining property owners on three occasions over several years, 12 parcels of Land remain unsold.

Property owners have been informed of Council's intention to take title to any unsold Land as part of its recent engagement and negotiations in 2022, consistent with the current policy. Furthermore, property owners have been informed that as a result of Council taking this action, they would be precluded from pursuing an application at Land Use Victoria for title to the Land via adverse possession.

It is considered that owners have been provided with ample opportunity to decide over the course of negotiations whether or not to acquire the Land (or alternatively pursue an application to Land Use Victoria for title via adverse possession) and that Council should now proceed to uphold its intention to take title to the unsold Land.

5. Consultation/communication

As discussed above, as part of the recent consultation process in 2022 associated with the intended sale of the remaining parcels of Land from the discontinued road, all adjoining property owners were informed that Council would take title to any remaining unsold land in accordance with current policy. None of the owners has expressed interest in acquiring the land in accordance with Council policy.

As the road has already been formally discontinued and easements created, there has been no further requirement to seek formal feedback from other service authorities and internal Council departments.

6. Financial and resource implications

If Council proceeds with taking title to the remaining unsold lots, it will have the ability to sell them to interested adjoining owners for market value, consistent with its policy.

In 2022 an updated valuation was completed. Using this information, the potential revenue from sale of the Land is provided in Table 1:

Table 1: Potential Land sale revenue

Item	Amount (GST inclusive)
Land sale price (395m ² x \$1,633.50)	\$645,232.50
Council's remaining costs (estimate)	\$5,000.00
Potential revenue	\$640,232.50

Costs associated with Council proceeding to take title to the unsold Land will be met within Council's existing budget.

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 to take title to the unsold Land is not expected to have a 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 Council take title to the Land remaining unsold from the discontinued road at the rear of 34 to 60 First Avenue and 2 to 30 Maitland Avenue, Kew, given that the abutting owners have not expressed interest in acquiring the Land over the years since the road was discontinued.

Manager: Amy Montalti, Chief Financial Officer

Report officer: Michael Hutchison, Head Strategic Property and Revenue

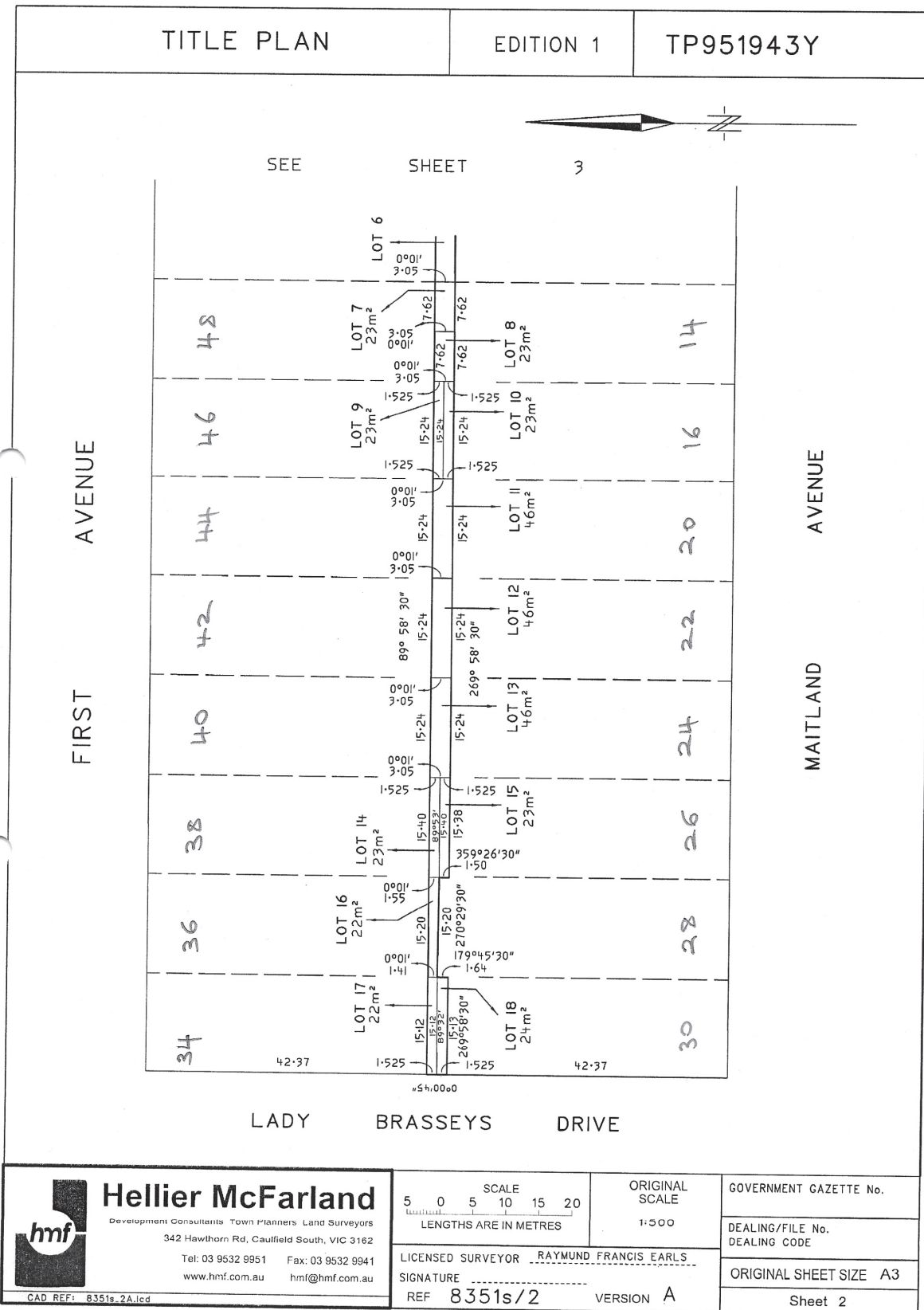
1. Attachment 1 - Site Plan [7.3.1 - 1 page]
2. Attachment 2 - Lot Plan T P 951943 Y [7.3.2 - 3 pages]



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SEE SHEETS 2 & 3 FOR LOT DETAILS

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