

## 7.8 Proposed discontinuance and sale of road reserve - Adjoining 41 McShane Street, Balwyn North

### Executive Summary

#### Purpose

This report is to consider commencement of the statutory procedures to discontinue, take title and sell the 3.05m wide section of road reserve, with a land area of 44.5 m<sup>2</sup> at the front of 41 McShane Street, Balwyn North.

#### Background

Council received a request from the owner of 41 McShane Street, Balwyn North, for the discontinuance and sale of the above unconstructed section of road reserve at the front of the property, as shown hatched on **Attachment 1**.

#### Key Issues

- The Road is in the name of the original subdivider.
- The Road Reserve is considered by officers to be of little practical value to Council.
- The Road Reserve has been enclosed within the front yard of 41 McShane Street, Balwyn North, for in excess of 15 years.
- The discontinuance and sale of the Road requires Council to comply with section 206 clause 3 of Schedule 10 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020*.

#### Confidentiality

Confidential information is contained in **Confidential Attachment 1**, 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 part of the McShane Street road reserve at the front of 41 McShane Street, Balwyn North, shown hatched in **Attachment 1** and as Lot 1 on Title Plan TP965749R in **Attachment 2** ("the Land"), to the owner of the adjoining property at 41 McShane Street, Balwyn North, by private treaty in accordance with Council's Discontinuance of Roads and Reserves Policy 2022 ("Council's Policy").
2. Gives 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 that Council proposes to discontinue the road reserve and

sell the land from the road reserve to the owner of 41 McShane Street, Balwyn North, by private treaty, and transfer to itself any remaining unsold land, in accordance with Council's Policy.

3. Invite 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 reserve 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 discontinuance and sale of the road reserve 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 to the owner of the adjoining property at 41 McShane Street, Balwyn North, for the sum of \$27,925.00 (inclusive of GST), in accordance with Principle 3 of Council's Discontinuance of Roads and Reserves Policy.

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

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## 1. Purpose

This report is to consider commencement of the statutory procedures to discontinue and sell the 3.05m wide section of road reserve, with a land area of 44.5 m<sup>2</sup> at the front of 41 McShane Street, Balwyn North, shown hatched in **Attachment 1** and as Lot 1 on Title Plan TP965749R in **Attachment 2** (“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”).

Principle 3 of section 4.2.8 of Council’s Policy has been used in determining the price for the Land.

### 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 may, be 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. A Council report seeking authorisation for the price negotiated will occur.”*

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 41 McShane Street, Balwyn North, for the discontinuance and sale of the above unconstructed section of road reserve at the front of the property, as shown hatched on **Attachment 1** (“the Road Reserve”).

The Road Reserve remains in the name of the original subdivider.

This occupation is thought to have commenced when the house lots were first laid out and McShane Street was constructed. Whilst McShane Street is shown as an 18.29m road on the original 1919 subdivision for the area, the physical road, including kerb and channel, footpaths and nature strips,

measures only 15.24m. Approximately 3.05m of the Road Reserve is enclosed within the properties on the eastern side of the road, with 41 McShane Street, Balwyn North being one of those properties.

The sections of Road Reserve at the front of 35 and 37 McShane Street, Balwyn North were previously discontinued and sold to the abutting property owners in 2022 and 1989 respectively. In considering the same proposal at 35 McShane Street in 2022, it was foreshadowed that 41 McShane Street would seek a discontinuance at a future point in time.

The Road Reserve has been enclosed within the front of the property at 41 McShane Street, Balwyn North, for in excess of 15 years and is not used for access.

See **Attachment 2** for the proposed allocation of the land if the road is discontinued.

See **Attachment 3** for an aerial view.

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

The Road Reserve is considered by officers to be of little value to Council and no longer reasonably required for public access. The Road Reserve has been enclosed within the front of the adjoining property at 41 McShane Street, Balwyn North, for in excess of 15 years.

None of the service authorities or Council have any assets within the Road Reserve nor have any requirements over the Road Reserve.

Although McShane Street, Balwyn North, is listed as a Public Road on Council's Register of Public Roads under the *Road Management Act 2004* (Vic), the occupied western 3.05m portion of the road reserve is not considered part of the Public Road. This is because it has never been utilised by the public for road purposes.

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

##### Stakeholder engagement

The owner of 41 McShane Street, Balwyn North, has made a conditional offer to purchase the Land from the Road Reserve, in accordance with Council's Policy. The owner has also agreed to meet Council's costs associated with undertaking the discontinuance of the Road Reserve and sale of the Land.

The surrounding property owners will be advised of the proposal as part of the statutory procedures.

The adjoining property owner at 39 McShane Street, Balwyn North has advised that they have no interest in gaining title to the Road Reserve enclosed within their property.

Service authorities and Council departments have been consulted and no objections were received.

### 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 Reserve. Public notice will be advertised 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 Reserve 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 Reserve, the sale will generate once off income for Council together with the ability to rate the land from the Road Reserve in the future.

The owner of 41 McShane Street, Balwyn North has furnished a statutory declaration attesting to the period of occupation of the Land by current and former owners of that property.

In addition, the owner of 41 McShane Street has signed conditional offers to purchase the Land from the Road Reserve for the total sale price of \$11,000 (inclusive of GST), plus costs which are currently estimated at \$27,925.

The purchase price comprises the following amounts shown in table 1:

*Table 1: Land sale revenue*

Item	Amount (GST inclusive)
Land sale price (capped price in accordance with Council Policy)	\$11,000.00
Reimbursement of Council's costs	\$16,925.00
Total	\$27,925.00

See **Confidential Attachment 4** for a copy of the valuation report.

## **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 Reserve 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.

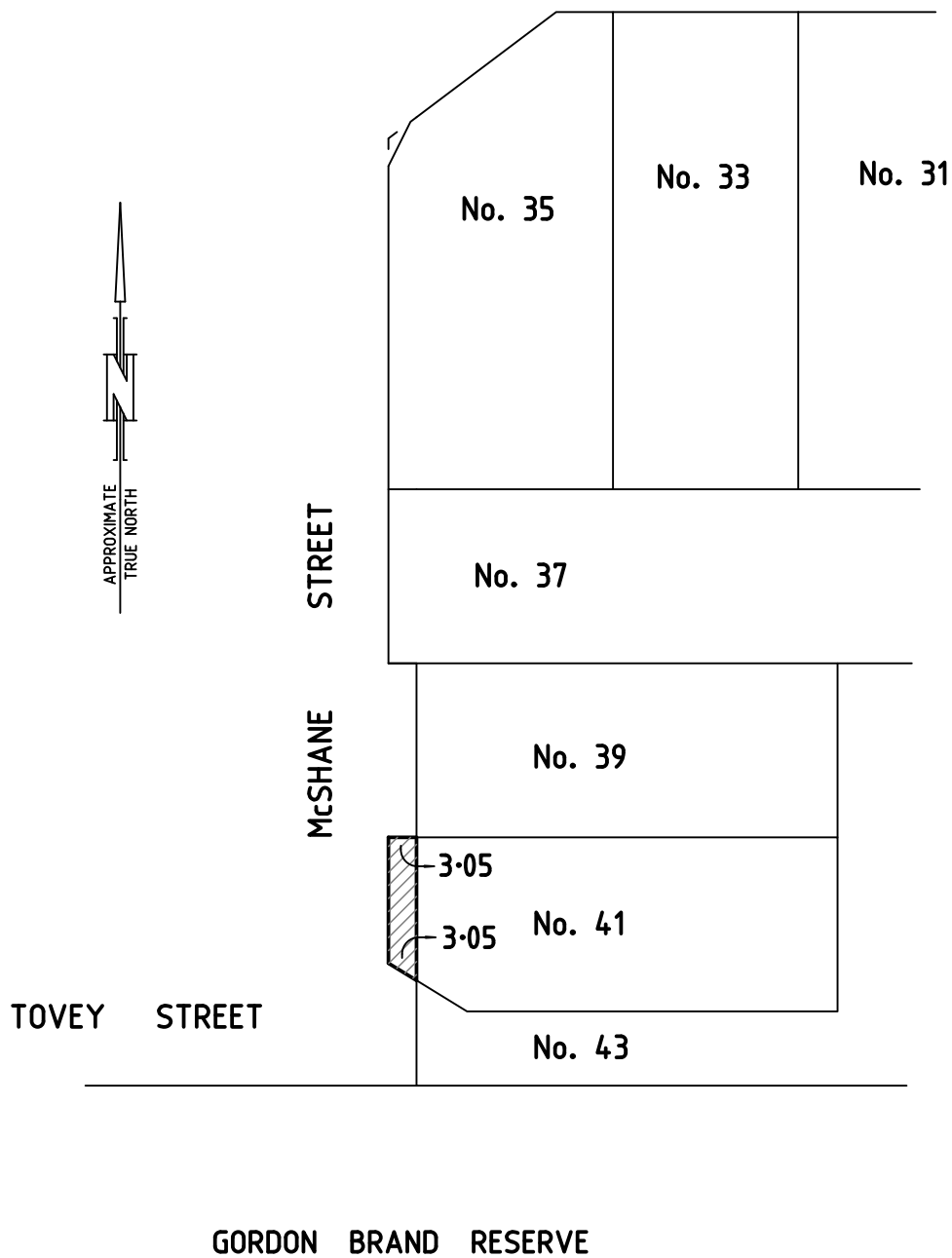
## **10. Conclusion**

It is considered by officers that the section of Road Reserve at the front of 41 McShane Street, Balwyn North, is no longer reasonably required as part of the Road Reserve for public use. In considering the same proposal at 35 McShane Street in 2022, it was foreshadowed that 41 McShane Street would seek a discontinuance at a future point in time. Therefore, it is now considered appropriate that procedures be commenced for its discontinuance and sale to the adjoining owner in accordance with Council's Policy. Progressing the proposal will formalise the occupation of the Land by the adjoining property owner at 41 McShane Street, Balwyn North which has prevailed for many years.

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

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

## Attachment 1



<b>TITLE PLAN</b>				<b>EDITION 1</b>	<b>TP965749R</b>	
<b>LOCATION OF LAND</b>  <b>PARISH:</b> BOROONDARA <b>TOWNSHIP:</b> _____ <b>SECTION:</b> _____ <b>CROWN ALLOTMENT:</b> _____ <b>CROWN PORTION:</b> _____ ELGAR'S CROWN SPECIAL SURVEY (PART)  <b>TITLE REFERENCE:</b> VOL. 12179 FOL. 634  <b>LAST PLAN REFERENCE:</b> LP7529  <b>DEPTH LIMITATION:</b> DOES NOT APPLY.				<b>WARNING:</b> THIS PLAN REPRESENTS AN EXPECTED DIVISION OF LAND. ANY ONE LOT MAY NOT HAVE BEEN CREATED. CHECK THE LOT/PLAN INDEX FOR CURRENT INFORMATION.		
				<b>NOTATIONS</b>		
<b>EASEMENT INFORMATION</b>					THIS PLAN HAS BEEN PREPARED FOR LAND VICTORIA TITLE DIAGRAM PURPOSES.  Date:  Assistant Registrar of Titles	
Easement Reference	Purpose/ Authority	Width (Metres)	Origin	Land Benefited/ In Favour Of		
<b>SCALE</b> 2.5 0 2.5 5 7.5 10 LENGTHS ARE IN METRES				<b>SCALE</b> 1:250	<b>ORIGINAL SHEET</b> SIZE A3	<b>FILE NO:</b> LGD
<b>Millar   Merrigan</b> <small>Land Development Consultants          (03) 8720 9500 R (03) 5134 8611          www.millarmerigan.com.au          survey@millarmerigan.com.au          G4M GLOBAL Quality ISO 9001</small>				<b>SURVEYORS REF</b> <b>27455S2</b> <small>VERSION 1 DATE 2/3/2023</small>		<b>DEALING CODE:</b> LGA
						<b>SHEET 1 OF 1</b>

TITLEPL.DWG



### Attachment 3

**Aerial image - Area proposed for discontinuance and sale (shaded red)**

