

7.6 Rear 18 to 22 Wills Street and 996 to 1000 Burke Road Balwyn - Proposed discontinuance and sale of right of way (road)

Abstract

This report is to consider commencement of the statutory procedures to discontinue and sell the road at the rear of 18 to 22 Wills Street and 996 to 1000 Burke Road, Balwyn. It is considered the section of road is no longer required for public access and has been enclosed within the adjoining properties for in excess of 15 years.

Consultation has been undertaken with relevant Council departments and external service authorities as detailed in section 5 of the report. No objections have been received. Adjoining owners have also been notified of the proposal and to date no issues have been raised.

The proposed commencement of the statutory procedures requires Council to give public notice of its intention to discontinue and sell the road and invite submissions from affected parties.

The report also proposes consideration be given to applying relevant policy statements from Council's Discontinuance of Roads and Reserves Policy 2015.

Confidential information is contained in **Attachment 5**, as circulated in the confidential section of the agenda attachments, in accordance with section 89(2) of the *Local Government Act 1989* (Vic), as the information relates to contractual matters and premature disclosure of the information could be prejudicial to the interests of Council or other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making.

If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Officers' recommendation

That Council, acting under section 206 clause 3 of Schedule 10 of the *Local Government Act 1989*, resolves to:

1. Commence the statutory procedures to discontinue the road at the rear of 18 to 22 Wills Street and 996 to 1000 Burke Road, Balwyn, shown hatched in Attachments 1 and 2 as annexed to the minutes.
2. Give public notice of the proposed discontinuance in the appropriate newspaper and on Council's website, under sections 82A, 207A, 223 of the Act, and for such notice to state if discontinued, Council proposes to sell the land from the road to the adjoining property owners by private treaty.

3. If no submissions are received following the publication of the public notice, 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 land from the road to the adjoining property owners, including the execution of all relevant documentation, in accordance with the purchase price detailed in **Attachment 5** of this report and annexed to the confidential minutes.
4. Note the discontinuance and sale will not affect any right, power or interest held by Yarra Valley Water and Boroondara City Council, in the road in connection with any sewers, drains or pipes, under the control of Yarra Valley Water and Boroondara City Council in or near the road.
5. Note as the section of road which is proposed to be discontinued is currently listed on Council's Register of Public Roads ("the Register") under the *Road Management Act 2004* (Vic), its removal from the Register will be attended to if a decision is taken by Council to discontinue the section of road as it will no longer be considered to be reasonably required for general public use.
6. In the event submissions are received, note a further report will be presented to Council to enable consideration of the submissions.

**Responsible director: Bruce Dobson
Customer Experience and Business
Transformation**

1. Purpose

This report is to consider commencement of the statutory procedures for the discontinuance and sale of a section of right of way (road) at the rear of 18 to 22 Wills Street and 996 to 1000 Burke Road, Balwyn, shown hatched in **Attachments 1 and 2**.

2. Policy implications and relevance to community plan and council plan

This matter is addressed under Council's Discontinuance of Roads and Reserves Policy 2015.

This report is consistent with the Council Plan 2017-21, in particular strategies 1, 12 and 13 regarding communication and engagement, improvement of amenity and proactive asset management. It also supports Strategic Objective 7 of the Boroondara Community Plan 2017-27, to "Ensure that ethical, financial and socially responsible decision making reflect community needs and are based on principles of accountability, transparency, responsiveness and consultation".

3. Background

Council received a request from an adjoining property owner for the discontinuance and sale of the road at the rear of 18 to 22 Wills Street and 996 to 1000 Burke Road, Balwyn, as shown hatched in **Attachments 1 and 2**.

The section of the road is not constructed and remains in the name of the original subdivider.

The road has been enclosed within the adjoining properties for in excess of 15 years and is no longer used for access.

See **Attachment 3** for the draft title plan showing the proposed division of the land if the road is discontinued.

The section of road at the rear of 996 Burke Road and 16 Wills Street through to Eyre Street, Balwyn while not constructed is open, well maintained and appears well used for access to a number of adjoining properties. This section of the road is well used and is not proposed to be discontinued. The section of road at the rear of 1002 to 1010A Burke Road and 22 to 32 Wills Street, Balwyn has previously been discontinued in 1988 and the majority of the land appears to have been acquired either by owners purchasing the land or by adverse possession.

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

4. Outline of key issues/options

The section of road is considered by officers to be no longer required for public access and has been enclosed within the adjoining properties for in excess of 15 years.

One (1) property owner has offered to purchase land from the road if the road is discontinued. Council officers will continue to negotiate with the adjoining property owners who at this stage have not indicated they would purchase the land from the discontinued road, in an attempt to reach a suitable outcome in relation to the remaining land.

5. Consultation/communication

A survey of adjoining property owners has been completed with one owner agreeing to purchase the land from the road is discontinued.

The following service authorities have been consulted:

- Yarra Valley Water
- Melbourne Water
- Telstra
- Multinet Gas
- CitiPower/United Energy
- Optus
- SPI Powernet (major electricity transmission lines)

No objections from the abovementioned authorities have been received. Yarra Valley Water has a sewer in the road and an easement will be created in favour of Yarra Valley Water in the title plan as part of the proposed discontinuance process.

The following Council departments have been consulted:

- Building Services
- Statutory Planning
- Strategic Planning
- Traffic and Transport
- Asset Management

No objections from the abovementioned departments have been received. Council has a drain in the road and an easement will be created in favour of Council in the title plan as part of the proposed discontinuance process.

The statutory procedures require Council to give public notice of its intention to discontinue and sell the road and invite submissions from affected parties. In addition, all adjoining property owners will be advised of the proposal in writing and informed of their right to make a submission. Notification will also be given on Council's website.

Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise with the proposal.

If any submissions are received, a further report will be presented to a future meeting of the Services Special Committee of Council to enable the consideration of any submissions and for a decision on whether to discontinue the road in full, in part or not to discontinue the road.

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 discontinuance and sale of the road, including the execution of all relevant documentation.

6. Financial and resource implications

Council's Discontinuance of Roads and Reserves Policy 2015 outlines the methodology to be applied in determining the purchase price of discontinued roads. In relation to this discontinuance proposal, the following Policy Statement 3, Principle 2 of the policy has been utilised to determine the proposed sale price:

"When a property owner can demonstrate exclusive occupation of the road or reserve for 15 years or longer, the purchase price may be discounted for the specific circumstance of the current market value. A Council report seeking authorisation for the price negotiated will occur. Evidence of exclusive occupation will include the signing of a statutory declaration together with any other supporting documentation. Council's GIS aerial photograph records will also provide information.

Where 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 \$9,000 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."

See confidential **Attachment 5** for details of the proposed purchase price of the land.

7. Governance issues

Officers involved in the preparation of this report have no conflict of interest. The list of prescribed human rights contained in the Victorian Charter of Human Rights and Responsibilities has been reviewed in accordance with Council's Human Rights Compatibility Assessment Tool and it is considered the proposed actions contained in this report represent no breaches of, or infringements upon, those prescribed rights.

8. Social and environmental issues

While the proposal does not give rise to any social or environmental issues, it will generate once-off income for Council as a result of the sale of the land together with an ability to rate the land in the future.

9. Evaluation and review

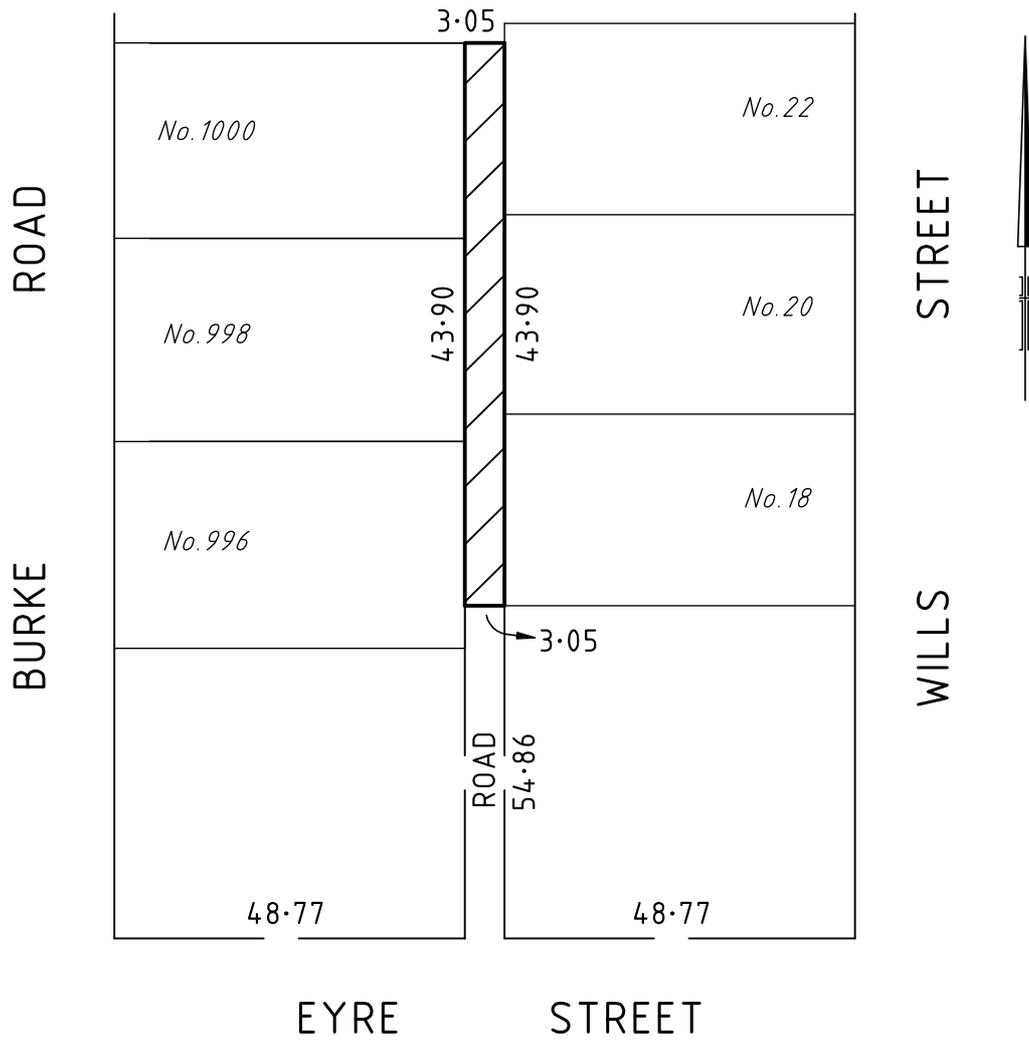
Council's intended course of action has been reviewed from a legislative compliance perspective by Council's consultants, Macquarie Local Government Lawyers and no issues have been identified.

10. Conclusion

It is considered by officers the section of road at the rear of 18 to 22 Wills Street and 996 to 1000 Burke Road, Balwyn, as shown hatched in **Attachments 1 and 2**, is not reasonably required as a road for public use. Therefore, it is considered appropriate procedures be commenced for its discontinuance and sale to the adjoining owners in accordance with Council's Discontinuance of Roads and Reserves Policy 2015.

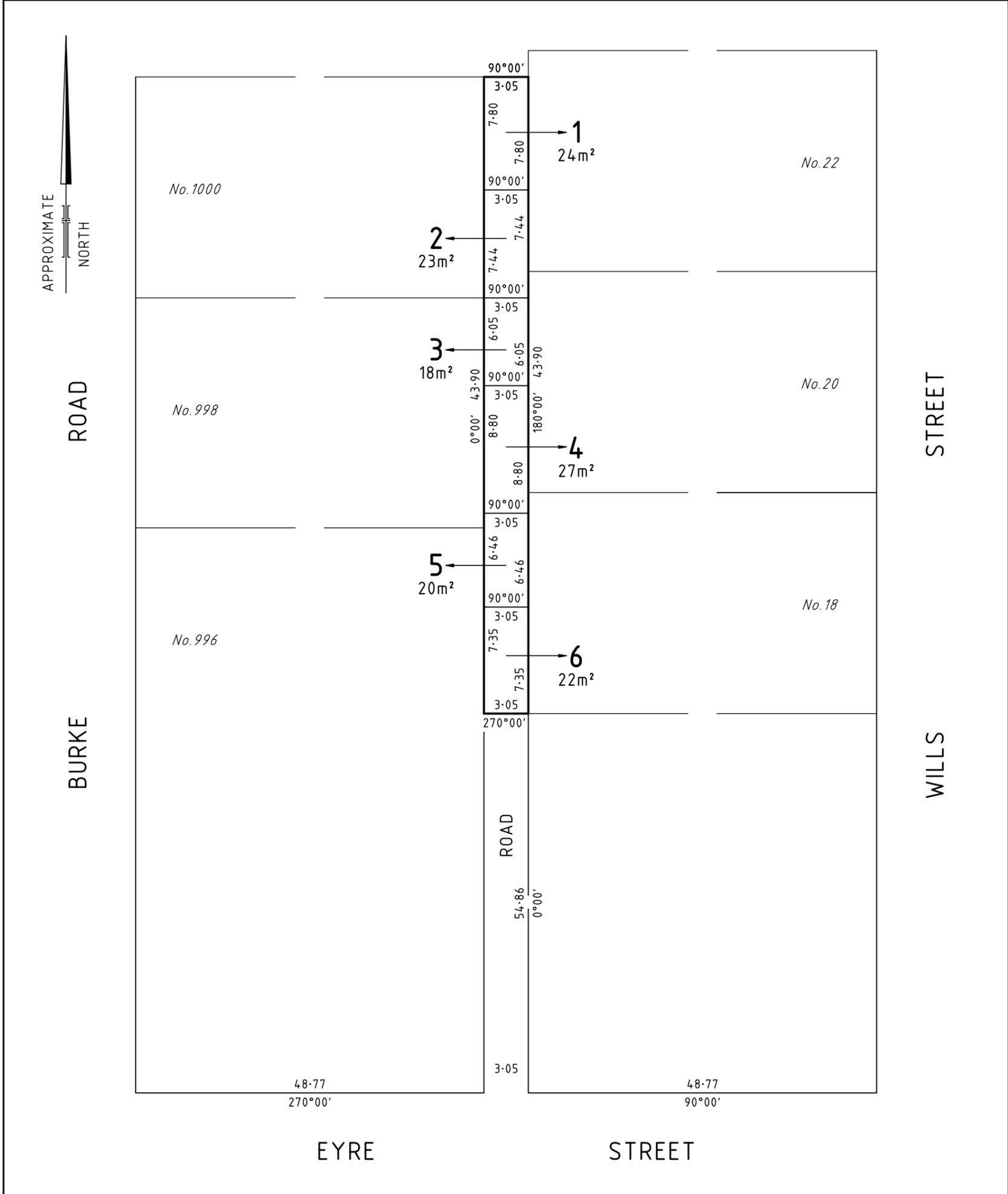
Manager: Chris Hurley, Commercial and Property Services

Report officer: John Lorkin, Coordinator Revenue and Property Services



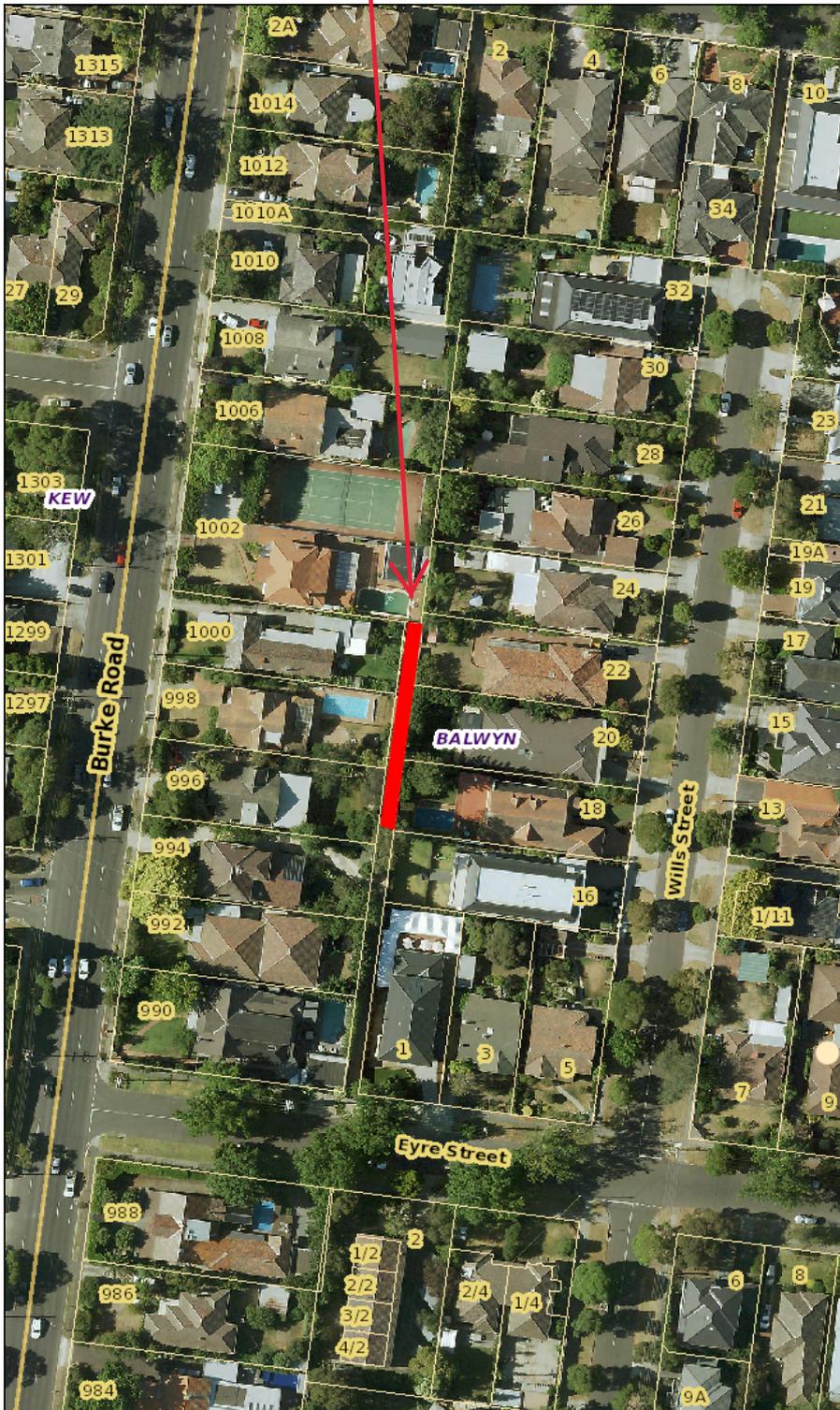


TITLE PLAN	EDITION 1	TP963086B
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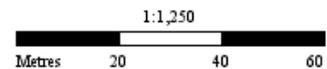


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BARKER MONAHAN A DIVISION OF TERRAIN CONSULTING GROUP PTY LTD SURVEYORS, DEVELOPMENT AND LOCAL GOVERNMENT CONSULTANTS 581 GILBERT ROAD, PRESTON 3072 P.O. BOX 2546 REGENT WEST 3072 TELEPHONE 9478 6133 FAX 9470 5189 EMAIL: survey@barkermonahan.com.au			

Section of right of way (road) proposed to be discontinued



- KEY**
- Multi Assessment ▲
 - Multi Lot ●
 - 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 —
 - Building Footprints
 - Recreation Areas
 - Hospitals
 - Education



Map Produced: 16 April, 2019 10:47:41



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