

7.7 1 Cherry Road, Balwyn - Proposed discontinuance of right of (road)

Abstract

This report is to consider commencement of the statutory procedures to discontinue part of the right of way (road) adjoining the northern boundary of the Council owned property at 1 Cherry Road, Balwyn. A recent survey has established that the brick wall of the building on Council's property occupies approximately 0.10m of the road. In addition, the eaves of the building encroach into the road's airspace by a further 0.75m.

The occupation of this sliver of road does not hinder traffic movement within the road and as such the section of road concerned is considered by officers to be no longer required for public access. The section of road forms a small part of the naturestrip, therefore, there will be no impact in relation to traffic flow or the safety of pedestrians accessing the constructed section of the road and adjoining naturestrip. If discontinued the land from the road is proposed to be transferred to Council and incorporated in to the title for 1 Cherry Road, Balwyn.

Consultation has been undertaken with relevant Council departments and external service authorities as detailed in section 7 of the report. No objections have been received.

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

Officers' recommendation

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

1. Commence the statutory procedures to discontinue part of the road adjoining 1 Cherry Road, Balwyn, shown hatched in **Attachment 1** and 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 transfer the land to itself.
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 transfer of the land from the road to Council, including the execution of all relevant documentation to give effect to the transfer.
4. Note the discontinuance will not affect any right, power or interest held by Boroondara City Council, in the road in connection with any pipes or drains under the control of Boroondara City Council in or near the road.

5. Note that once the discontinuance has been published in the *Victoria Government Gazette* the Register of Public Roads (“Register”) be updated in accordance with section 19 of the *Road Management Act 2004* to remove the section of discontinued road from the Register.
6. In the event submissions are received, note a further report will be presented to Council to enable consideration of the submissions.

Responsible director: Phillip Storer, Chief Executive Officer

1. Purpose

This report is to consider commencement of the statutory procedures for the discontinuance and transfer to Council of a section of right of way (road) adjoining the northern boundary of the Council owned property at 1 Cherry Road, Balwyn, shown hatched in **Attachment 1**.

2. Policy implications and relevance to council plan

This report is consistent with the Council Plan 2017-21, in particular strategy 7.2 to “*Ensure transparent decision making through open governance processes*”. It also supports Strategic Objective 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 officers recently became aware Council’s building at 1 Cherry Road, Balwyn, was possibly overhanging (encroaching) the road reserve along the side of the property.

A re-establishment survey confirmed that the brick wall, window frames and services pipes on the northern boundary of the building occupy approximately 0.10m of the adjoining road reserve. Further, the eaves of the building overhang the road by a further 0.75m. The encroachment is shown in the cross - section plan in **Attachment 2**.

The unnamed road adjoining 1 Cherry Road services various commercial premises in Whitehorse Road together with 1 Cherry Road and 95 Balwyn Road. As can be seen in **Attachment 2**, the northern 3.25m of the 4.88m wide road has been constructed. The remaining 1.63m on the southern side of the road is unconstructed and forms part of a landscaped nature strip/verge as shown delineated yellow on the photo in **Attachment 3**. The photo in **Attachment 4** details the extent of the encroachment/overhang.

It is proposed to discontinue 1.10m of the road adjoining 1 Cherry Road, Balwyn, in order to regularise the current encroachment, by the property located at 1 Cherry Road, Balwyn. Once discontinued, the land from the road is proposed to be transferred to Council.

The balance of the road (including the constructed portion of road) will remain open and available for public access.

See **Attachment 5** for an aerial view.

4. Outline of key issues and options

It is considered by officers that the section of road proposed for discontinuance is no longer required for public access. The discontinuance can be pursued in order to regularise the current occupation without limiting or affecting the current use of the road.

The entire 4.88m wide road is currently listed on Council's Register of Public Roads (the Register) under the *Road Management Act 2004*. If the sliver of road is discontinued, the Register will need to be amended accordingly.

5. Consultation/communication

The following service authorities have been consulted:

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

No objections from the abovementioned authorities have been received.

The following Council departments have been consulted:

- Building Services
- Strategic and Statutory Planning
- Traffic and Transport
- Asset and Capital Planning
- Environmental and Open Spaces

No objections from the abovementioned departments have been received.

Council has a drain within the land and therefore an easement will be 'saved' in favour of Council as part of the proposed discontinuance process.

The statutory procedures require Council to give public notice of its intention to discontinue the section of road and transfer the land to itself and to also invite submissions from affected parties. In addition, all abutting 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 Delegated 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 of the road and for Council to transfer the land to itself, including the execution of all relevant documentation.

6. Financial and resource implications

All of the costs associated with pursuing the proposed discontinuance and Council transferring the land to itself will be met by Council.

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 that 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 provide a practical solution to the anomaly with the encroachment over part of the road by the building on Council's land at 1 Cherry Road, Balwyn, and enable Council to better consider the future of its property at 1 Cherry Road, Balwyn.

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 adjoining 1 Cherry Road, Balwyn, as shown in **Attachment 1** is not reasonably required as a road for public use and as such it is appropriate that procedures be commenced for its discontinuance and for Council to transfer the land to itself.

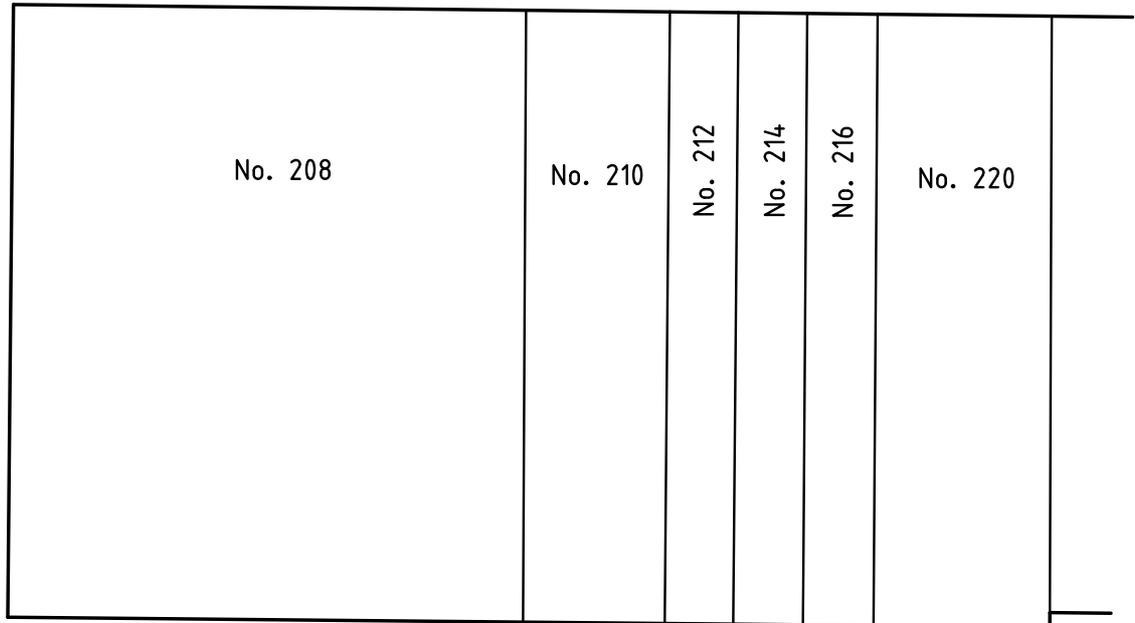
Manager: Callista Clarke, Acting Chief Financial Officer

Report officer: John Lorkin, Coordinator Revenue and Property Services

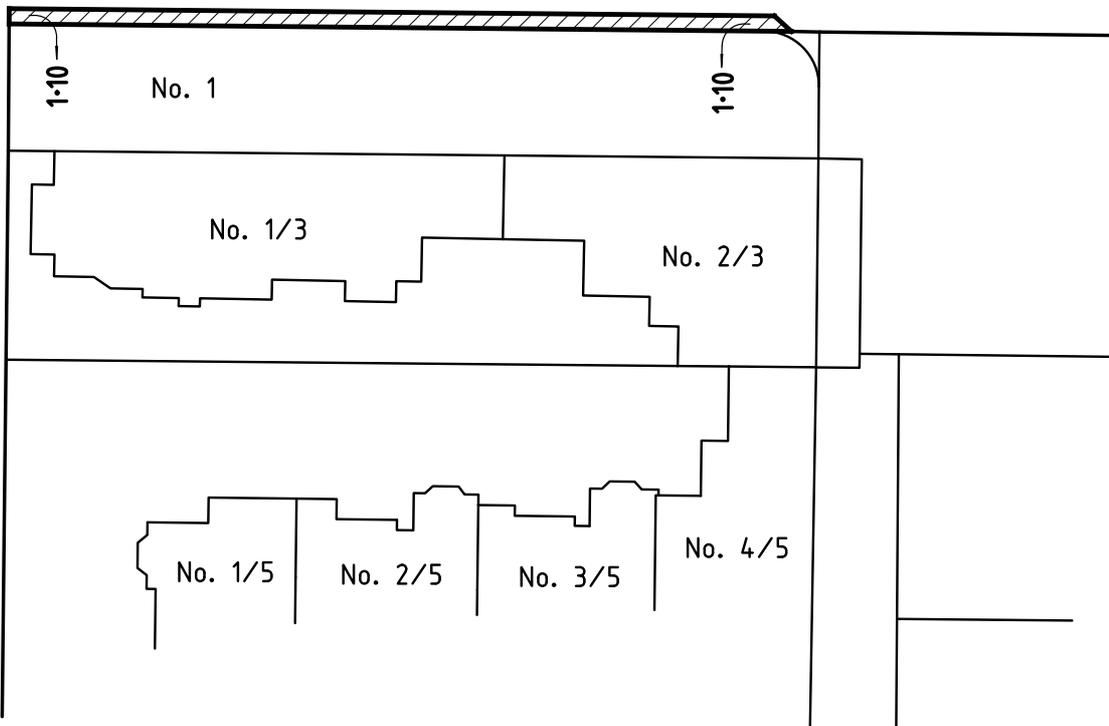
WHITEHORSE ROAD

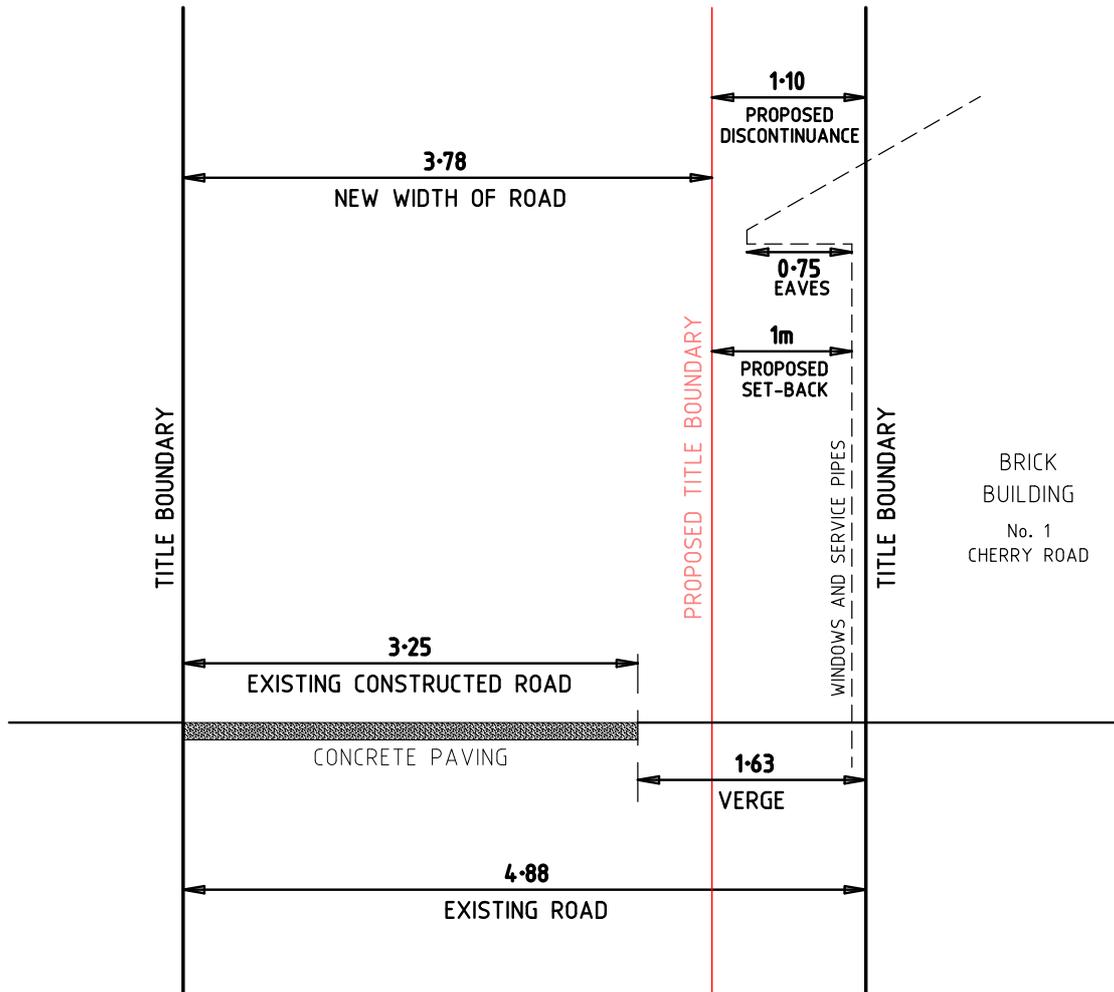


CHERRY ROAD



ROAD





TYPICAL CROSS SECTION

ROAD ADJACENT TO
1 CHERRY ROAD, BALWYN



View looking west at the road. Rear of Whitehorse Road properties on right and 1 Cherry Road on left.



View looking west showing the overhang/encroachment of the eaves, windows, service pipes and air conditioning unit of 1 Cherry Road over part of the road.



KEY
Multi Assessment

Multi Lot

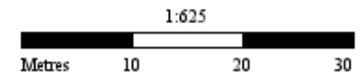
Road Names - Major

Road Names - Minor

Property

Roads - Major

Suburbs



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