

**1.4 PROPOSED ROAD DISCONTINUANCE – PART OF JACK EDWARDS RESERVE, OAKLEIGH**

Responsible Director: Peter Panagakos

**RECOMMENDATION***That Council:*

1. *Notes that a parcel of Council-owned land which forms part of Jack Edwards Reserve, 22-38 Edward Street, Oakleigh is encumbered by a carriageway easement in favour of VicTrack as registered by Dealing 1191646 ('Easement'), being the land known to title as Lot 1 on TP699239 as described in certificate of title volume 2131 folio 152 ('Land'), further noting that the Easement is defined as a Road under the Local Government Act 1989 ('Act').*
2. *Notes that the proposed Jack Edwards Reserve Pavilion and Grandstand Development includes significant works on the Land described in item 1 above and requires the Land to be free from the Easement to allow for these future works.*
3. *Notes that VicTrack have advised they are unable to surrender the Easement and the only options they made available to Council are as follows:*
  - a) *Council to purchase the Easement at market value.*
  - b) *For VicTrack to lodge a formal exemption application with the Valuer General's Office to sell the Easement to Council for a reduced or nil market value understanding:*
    - i. *Council must pay a fee of \$2,000.00 for the exemption application with no guarantee of a successful outcome and that due to resourcing Council can expect significant delays in progressing the above and that there is no guarantee of the outcome.*
4. *Given items 1 to 3 above, and in particular the uncertainty with the proposed VicTrack process, it is open to Council to resolve to commence the statutory procedures pursuant to Clause 3 of Schedule 10 and Sections 207A and 223 of the Act to remove the Road status, and thus remove the Easement encumbrance from the Land, on the basis that this is the most efficient and cost-effective method to remove the Easement ('Proposal').*
5. *Given item 4 above, resolves to commence the statutory procedures pursuant to Sections 207A and 223 of the Act to consider discontinuing the Easement (as a Road) ('the Proposal').*

6. *Gives public notice of the Proposal in accordance with Sections 207A and 223 of the Act in a daily newspaper and on Council's website from 3 March 2023 and invite submissions on the Proposal.*
7. *Authorises Council's Chief Executive Officer or her delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act in relation to this matter ('Appointed Officer').*
8. *Appoints a Committee of Council, comprising of the Mayor and Oakleigh Ward Councillors, to consider any submissions received to the Proposal under section 223 of the Act at 6:40pm on 11<sup>th</sup> April 2023 at the Monash Civic Centre, 293 Springvale Road, Glen Waverley.*
9. *Notes that following the meeting referred to in item 8 above and in consideration of any submissions, that the Committee of Council will provide a report back to Council on its considerations including a summary of any submissions and make a recommendation to Council on whether or not to proceed with the Proposal.*

### **INTRODUCTION**

This report discusses the status of a parcel of Council's land which forms part of Jack Edwards Reserve, 22-38 Edward Street, Oakleigh. The land is currently encumbered by a carriageway easement. Officers have had discussions with the beneficiary of the easement, the Victorian Railway Commissioners (now VicTrack) about removing the easement from the land.

VicTrack have confirmed that the easement is not required for its intended purpose of a carriageway to the railway tracks but that there is a formal process they have to follow for the easement to be removed which includes costs to Council and no guarantee of a successful outcome.

Removing the easement (encumbrance on title) is important to allow the works required by the Jack Edwards Reserve Pavilion and Grandstand Development to proceed.

As the carriageway is a "Road" for the purposes of the Local Government Act 1989 (Act), this report discusses Council using its own powers as a road authority and as provided by the Act to remove the carriageway easement from the land and not rely on negotiations with VicTrack given the uncertainty of that process.

### **BACKGROUND**

#### **Jack Edwards Reserve**

At its meeting on 27 September 2022, Council received a report on the Jack Edwards Reserve Pavilion and Grandstand Development (**Development**) and resolved as follows:

*“That Council:*

- 1. Notes the currently committed funding towards the development of the Jack Edwards Reserve pavilion and grandstand of \$2 million from the Federal Government, \$4 million from the State Government, \$500,000 from the Oakleigh Cannons Football Club and \$8.2 million from Council.*
- 2. Begins the design for the development of the Jack Edwards Reserve pavilion and grandstand on the basis of a project cost of a minimum of \$14.7 million, being the amount committed to date.*
- 3. Enters into a binding agreement with the Oakleigh Cannons Football Club in relation to its contribution of \$500,000 towards the cost of this project.*
- 4. Continues to explore options for additional funding to enable the project to fulfill its original scope estimated at \$16.4 million, including but not limited to other levels of government and the Oakleigh Cannons Football Club.*
- 5. Authorises the CEO or her delegate to formalise the funding agreements with the State and Federal Governments for a project value of \$14.7 million.”*

The proposed Development will include construction works within Jack Edwards Reserve (**Reserve**) and includes construction over a parcel of land which forms part of the Reserve. This particular parcel of land is covered in its entirety by a carriageway easement in favour of VicTrack which, given its existence, prevents the required works from being undertaken on this part of the Reserve.

### **The Land and Easement**

The parcel of land in question is registered to the City of Monash and is known to title as Lot 1 on TP699239 as described in certificate of title volume 2131 folio 152, with a total area of approximately 1,300m. It is shown bordered red in Image 1 below (**Land**).

The carriageway easement which encumbers the entirety of the Land is detailed in Dealing 1191646 and benefits VicTrack (**Easement**).

The Easement is a remnant of when the rail track was directly connected to, and accessed from, Edwards St, but is no longer reasonably required due to the development of the warehouses along the Southern border of the Reserve. The Easement does not currently extend from the Land to the rail track and aerial photographs show that it has not been used for a number of years.



**Discontinuance of the Easement**

Following further consideration of this matter, it was confirmed that the Easement is considered a 'right of way' and, therefore, a 'road' within the meaning of the Act.

Therefore, noting VicTrack's position regarding the Easement and the options they presented, Council should additionally note that is it able to use its powers pursuant to Clause 3, Schedule 10 of the Act to discontinue the Easement as a road, after having regard to all relevant submissions and considerations in relation to a road discontinuance proposal in accordance with Section 207A and Section 223 of the Act. The effect of the notice in the Victoria Gazette of the road discontinuance will be to vest the land that is encumbered by the Easement in Council, free of the encumbrance.

***DISCUSSION***

Having given due consideration to the options available to Council to extinguish the Easement, it is recommended that Council proceed with a road discontinuance process under the Act.

This presents the most efficient and cost-effective way for Council to remove the Easement to allow the required works required by the Jack Edwards Reserve Development (**Proposal**).

**The Statutory Process**

An outline of the statutory process for the road discontinuance procedure is:

1. Council to agree to commence the statutory procedures for a road discontinuance pursuant to Clause 3, Schedule 10 of the Act, including a public notification of the proposed discontinuance in accordance with s.223 and s.207A.
2. Council to undertake the required public notification process pursuant to Sections 223 and 207A of the Act.
3. Following step 2 above, the committee of Council will consider any submissions and make a recommendation to Council on whether to proceed with the Road discontinuance. Should the committee recommend and Council resolve to proceed with the discontinuance of the road, the decision will be gazetted and Council's surveyor will lodge a plan of subdivision pursuant to section 35(8) of the Subdivisions Act 1988 to consolidate the parcels which form Jack Edwards Reserve (including the Land, which would now be free from the Easement) to allow the works required at the Reserve to proceed.

***CONSULTATION***

In accordance with Sections 223 and 207A of the Act, a public notice of the Proposal will be published in the newspaper and on Council's website.

The public notice will invite submissions on the proposal in accordance with Sections 223 and 207A of the Act and submitters may request to be heard by a Committee of Council prior to a decision being made on the Proposal.

A Committee comprising of the Mayor and Oakleigh Ward Councillors will meet on 11 April 2023 at 6:40pm to consider any submissions received and hear any submitter who requested to be heard in support of their submission.

Following the committee meeting referred to above and in consideration of any submissions, the Committee of Council will provide a report back to Council on its considerations including a summary of any submissions and make a recommendation to Council on whether or not to proceed with the Proposal.

### ***POLICY IMPLICATIONS***

The proposed discontinuance of the Easement supports the works of the Jacks Edwards Reserve Development and therefore shares the same Policy frameworks and strategies, namely, the Council Plan, A Healthy and Resilient Monash, Monash Open Space Strategy, Gender Equity Strategy and Action Plan, Football (Soccer) Plan, Active Monash's Vision and Active Communities Framework and Council's Asset Management Policy.

### ***HUMAN RIGHTS CONSIDERATIONS***

There are there no known human rights implications with regards to this Proposal except to consider all submissions made equally.

### ***GENDER EQUITY IMPLICATIONS***

A formal gender impact assessment has not been undertaken for the Jack Edwards Reserve Development. However, this will be undertaken as part of the funding application required to secure the State Government funding commitment and before the commencement of the project.

It is noted that one of the major improvements associated with the proposed Redevelopment is the provision of additional changerooms to accommodate women's and girl's teams.

### ***HUMAN RIGHTS CONSIDERATIONS/GENDER EQUITY IMPLICATIONS***

There are no human rights considerations or gender equity implications associated with the Proposal.

### ***FINANCIAL IMPLICATIONS***

Estimates for the required surveying works for the Proposal are as follows:

Advertising and Gazettal Plan - \$1000 + GST

Title Re-establishment Survey - \$7820 + GST

Other survey and plan certification fees - \$380.40 + GST

Funding is provided by the Jack Edwards Reserve Development project budget.

***CONCLUSION***

Officers are seeking Council's endorsement to begin the statutory processes under the Act to remove the Easement status via a road discontinuance procedure to allow the required Jack Edwards Reserve Development works to proceed.