

## 7.2 PROPOSED ROAD DISCONTINUANCE AND SALE OF LAND TO ABUTTING LANDOWNERS – MAY PARK AVENUE, SHAW STREET, HIGH STREET ROAD AND WARRIGAL ROAD ASHWOOD

Responsible Committee: Section 223 Committee of Council

### **RECOMMENDATION:**

*That Council:*

- 1) *Receives this report from the Committee established by Council pursuant to Section 223 of the Local Government Act 1989 (S.223 Committee) to hear and consider any submissions received to Council's public notice proposing the discontinuance of the road shown hatched on the plan in Attachment 1 to this report, being referred to as road on plan of subdivision 2648 ('Road') on the basis that it is no longer reasonably required for general public use.*
- 2) *Notes the S.223 Committee met on Tuesday 24 March 2020 to hear and consider submissions received in respect of the proposed discontinuance of the Road.*
- 3) *Accepts the S.223 Committee's recommendation as follows:*

*The Committee resolved, having considered the six written submissions received and one verbal submission, to recommend to Council that:*

  1. *Council proceed with the discontinuance of the road.*
  2. *Divide the land from the road into individual parcels (lots) for sale to abutting land owners in accordance with the requirements of the easement to Yarra Valley Water Authority and the need for ongoing access for maintenance.*
- 4) *Notes that the land from the Road will be sold to adjoining property owners at not less than market value.*
- 5) *Directs that subject to the completion of item 3) 2. above, a Notice of Road Discontinuance be published in the Victoria Government Gazette pursuant to the provisions of clause 3(a) of Schedule 10 of the Local Government Act 1989 noting Council's decision to discontinue the Road and sell the land from the Road to adjoining landowners.*
- 6) *Authorises the Chief Executive Officer to arrange for the preparation and execution of all documents required in connection with, and to give effect to, the discontinuance of the Road and the apportionment and sale of the land from the Road to adjoining landowners.*

**INTRODUCTION**

This report discusses the outcome of the public notification process and proposes that Council receive and accept the recommendations of the Committee established by Council (S.223 Committee) to hear and consider submissions received to the public notice regarding Council's proposal to discontinue the road shown hatched on the plan in Attachment 1 to this report ('Road').

**BACKGROUND**

At the Ordinary Council meeting on 26 November 2019, Council considered a report that discussed the history of requests from some of the adjoining property owners to the Road to purchase a portion of the Road abutting their properties due to the anti-social behaviour that occurs in the Road from time to time including graffiti on fences and garage walls.

The report also discussed the outcome of investigations with service authorities regarding any need for the Road to remain and the existence of any underground assets.

After considering the above report, Council resolved as follows:

*That Council:*

- 1. Acting under section 17(4) of the Road Management Act 2004 (Vic), resolves that the road shown highlighted green in Attachment 1 to this report, being referred to as road on plan of subdivision 2648 ('Road') be removed from Council's Register of Public Roads on the basis that the Road is no longer reasonably required for general public use for the reasons set out in the report.*
- 2. Agrees to commence the statutory procedures pursuant to Clause 3 of Schedule 10 and section 189(4) of the Local Government Act 1989 (Vic) ('the Act') to consider discontinuing the Road and selling the land from the discontinued Road to the adjoining land owners for market value or as otherwise agreed.*
- 3. Pursuant to Sections 207A and 223 of the Act, directs that public notice of the proposed discontinuance of the Road be given in the local newspaper and on Council's website.*
- 4. 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 respect of the proposal ('Appointed Officer').*
- 5. Appoints a Committee of Council comprising the Mount Waverley Ward Councillors to hear and consider any submitters requesting to be heard under Section 223 of the Act at a time and place to be fixed.*
- 6. Directs that following any hearing and considering of submissions by the Committee of Council, or if no submissions are received, Council's Appointed*

*Officer, report back to Council on the outcome of the Section 223 process and seek a decision on whether or not to proceed to discontinue the Road.*

## **DISCUSSION**

### **Public Notification**

In accordance with items 2 and 3 of the abovementioned Council report, a public notice advising of Council's intention to discontinue the Road and sell to adjoining landowners was published in the Monash Leader and on Council's website on 28 January 2020 and called for submissions on the proposal to be received at Council by 25 February 2020.

### **Public Response**

There were 4 telephone enquiries from adjoining property owners, 1 counter enquiry at Council's customer service and 6 written submissions received during the public notification period. One submitter requested to be heard.

The telephone enquiries and the counter enquiry were from adjoining property owners who asked general questions regarding clarification of the process for responding to the public notice and the next steps in the process for the discontinuance of the Road. They were informed that the next step is for the S.223 Committee to meet to hear and consider submissions and make a recommendation to Council.

A letter of response was sent to all submitters acknowledging receipt of their submission and subsequently, a letter informing them of the date and time of the meeting of the S.223 Committee on 24 March 2020 where submissions will be heard and considered.

### **Submissions to the Public Notice**

Submissions closed on 25 February 2020 and six (6) submissions were received. A summary of the submissions received is provided in Table 1 below:

**Table 1 – Submissions**

<b>Submission</b>	<b>Summary of submission</b>
1	Received on 31 January 2020 and confirms support for the discontinuance of the road. It expressed concerns over security with the road and feels it is becoming increasingly unsafe. It notes they have responded to all letters from Council regarding the proposal to discontinue the road and have always expressed an interest in its discontinuance and purchasing the land.
2	Received on 1 February 2020 and confirms support for the discontinuance of the road. It provides examples of anti-social behaviour that occurs. The submission also mentions the laneway not serving any positive uses and

	refers to the location of the sewerage asset that impacts the use of the land from the road.
3	Received on 13 February 2020 and is supportive of the decision to close the road and purchasing a part of the laneway as previously surveyed if price is reasonable.
4	Received on 20 February 2020 and remains interested in purchasing the land from the road discontinuance.
5 – <b>REQUEST TO BE HEARD</b>	Received on 23 February 2020. Agree to discontinue and purchase the northern section of the road abutting his property at 11 May Park Avenue and 42, 44-46, 48 and 50 High Street Road. Does not agree to discontinue the section of road abutting the eastern section of his property given the sewerage system.
6	Received on 24 February 2020 and confirmed interest in purchasing the discontinued road abutting their property in part or all.

### **S.223 Committee Meeting**

The S.223 Committee met at 6:00pm on 24 March 2020 in Council’s Chambers to consider the outcome of the above public notification process.

Mayor Stuart James and Councillors Brian Little and MT Pang Tsoi made up the S.223 Committee appointed by Council. Councillor Rebecca Paterson was an apology.

The Agenda for the S.223 Committee was to consider all written submissions received and hear from one submitter that requested to be heard during the meeting.

After considering all submissions, the outcome of the S.223 Committee was as follows:

*“The Committee resolved, having considered the six written submissions received and the one verbal submission, to recommend to Council that:*

1. *Council proceed with the discontinuance of the road.*
2. *Divide the land from the road into individual parcels (lots) for sale to abutting land owners in accordance with the requirements of the easement to Yarra Valley Water Authority and the need for ongoing access for maintenance.”*

The S.223 Committee noted the comments from submitter no. 5 regarding the eastern portion of the road adjoining 11 May Park Avenue and not having received a valuation with the opportunity to purchase a portion of the road. The S.223 Committee was advised that a valuation had not been provided to the owner due to the owners objection to discontinuing this portion of road.

Furthermore, it was noted that officers would provide the owner with a valuation of a portion of the road and provide the owner with the opportunity to purchase a portion of the road, consistent with all other adjoining landowners subject to the requirements of Yarra Valley Water.

Should the owner or any other adjoining landowner object to purchasing the land in accordance with the below subdivision process, the land will be offered to the other adjacent adjoining landowners.

### **The Road Discontinuance Process**

The road status can only be extinguished if the Road is formally discontinued under Clause 3 of Schedule 10 to the Local Government Act 1989 or pursuant to the Road Management Act 2004 procedures.

This S.223 Committee report to Council is the next step in the road discontinuance and sale process requiring Council to resolve to proceed to discontinue the Road and apportion the land from the Road (with due consideration to the location of the Yarra Valley Water sewerage asset) for sale to adjoining property owners.

Once the apportionment of the Road has been determined by survey and agreement on sale price reached with adjoining landowners, the publication of a Notice of Road Discontinuance in the Victoria Government Gazette will follow and the road status will be removed and the land vested in Council enabling Council to complete the land transfer process to adjoining landowners.

### **Yarra Valley Water Sewerage Asset**

Due to the location of the Yarra Valley Water sewerage asset, the division of the land for sale to adjoining landowners will need to take into account the future access requirements of Yarra Valley Water (for maintenance purposes). It is usual for a service authority to stipulate its requirements for location of boundary fences and in this instance, Yarra Valley Water have stipulated their requirements to be "dividing boundary must be located at least 0.60 metres from the line of Yarra Valley Water's sewer or other fittings such as access chamber and inspection shaft covers." There may be additional requirements which will be confirmed during preparation of the survey plan to apportion the land.

### **FINANCIAL IMPLICATIONS**

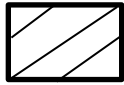
Any transfer of the land to issue from the Road to adjoining property owners will be subject to a current market valuation at the time of sale in accordance with the *Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land* (June 2009).

In addition to the market valuation, adjoining property owners will be required to reimburse Council's reasonable out-of-pocket expenses incurred with the discontinuance of the Road.

***CONCLUSION***

It is recommended that Council proceed with the discontinuance of the Road and engage a surveyor to prepare a survey plan to apportion the land for transfer to adjoining property owners with due consideration to the location of the existing sewerage asset and need for ongoing maintenance.

ATTACHMENT 1



Road to be discontinued

