

### 5.3 FORMER ROAD ABUTTING 32 & 34 CURRAN STREET OAKLEIGH EAST

(TRAF61: JE:JMCA)

Ward: Oakleigh

Responsible Director: Don Cameron

#### ***RECOMMENDATION***

*That Council:-*

- 1. Transfers the former road abutting 32 and 34 Curran Street, Oakleigh East to itself (which land vested in Council pursuant to Victoria Government Gazette Notice dated 3 April 2003 and being the land indicated on the plans attached to this report as Attachment 1);*
- 2. Authorises the Chief Executive Officer, or his duly appointed delegate, to prepare and sign a Transfer of Land and all other documentation required to effect registration of the land by the Registrar of Titles in the name of Monash City Council;*
- 3. Upon registration, enter into a licence agreement with the occupiers of the land as appropriate.*

#### ***INTRODUCTION***

This report proposes that Council become the registered proprietor of the remaining portion of road vested in Council on 3 April 2003 abutting 32 and 34 Curran Street, Oakleigh East and that upon registration enter into licence agreements with the abutting property owners.

#### ***BACKGROUND***

Council at its meeting of 13 August 2002, resolved to commence the statutory procedures to discontinue the road (laneway) abutting and occupied by property owners at 33 Dublin Street, 32 Curran Street and 34 Curran Street, Oakleigh East.

On 3 April 2003 the land vested in Council upon publication of the Notice of Discontinuance in the Victoria Government Gazette.

Negotiations were entered into between Council and the abutting property owners who occupied the land and a proposal to purchase the land from the discontinued road was put to the adjoining owners occupying the land in August 2003.

The only parcel of land sold was that occupied by the owner of 33 Dublin Street. Follow-up letters were sent to the owners of 32 and 34 Curran Street in May 2004 however the balance of the land has remained unsold.

#### ***ANALYSIS***

Land vested in Council is protected from adverse possession claims if Council is the registered proprietor of the land. Furthermore, Council can only enter into licence

agreements with the occupiers of the land if Council is the registered proprietor of the land. It is therefore considered that Council should become the registered proprietor of the land by resolving to transfer to itself the land (vested in Council pursuant to the Victoria Government Gazette) and to submit a Transfer of Land to the Land Registry for registration.

### ***IMPLEMENTATION***

Upon registration of Council as the registered proprietor, it is then proposed that Council enter into a formal licence agreement with each of the occupiers to protect Council against liability for loss and damage arising by reason of the occupier's use and occupation of the land. The licence agreements would be on the following basis:

1. The licence expires upon transfer or sale by the current registered proprietor of the properties 32 and 34 Curran Street;
2. The occupiers must agree to indemnify Council from and against all claims resulting from any damage, loss, death or injury in connection with the use and occupation of the land; and
3. A licence fee of \$1 is payable on demand.

Upon Council entering into the licence agreement with the occupiers, a notice will be placed on Council's rating records which would indicate to any successor in title that the land is owned by Council giving Council flexibility to enter into further negotiations with those parties.

### ***CONCLUSION***

It is considered that Council should proceed with an application to the Registrar of Titles to have the title to the land transferred in accordance with this report and that upon registration, Council enter into licence agreements with the occupiers of the land being the owners of 32 and 34 Curran Street, Oakleigh East.