

## 5.10 PROPOSED DISCONTINUANCE OF PART OF THE ROAD RESERVATION ABUTTING 59 ALVIE ROAD, MOUNT WAVERLEY

(TRAF186:SAL:JWP)

Ward: **Mount Waverley**

Responsible Director : Don Cameron

### **RECOMMENDATION**

*1. That Council, acting under clause 3 of Schedule 10 to the Local Government Act 1989 ("the Act"), and being of the opinion that part of the Road reservation abutting and occupied by the property 59 Alvie Road, Mount Waverley ("the Road reservation" (as shown on the plan at Attachment 2) is not reasonably required as a Road –*

*(a) Commences the statutory procedures to discontinue the Road status of the road reservation occupied by 59 Alvie Road, Mount Waverley;*

*(b) Gives, under Sections 207A and 223 of the Act, public notice of the proposed discontinuance in the Waverley Leader with such notices stating that, if discontinued, Council proposes to either retain or sell the land to the abutting owners;*

*(c) Appoints a Committee of Council, comprising Councillors Banerji, Brown and Morrissey, to consider submissions received under S. 223 of the Act on 4 March, 2008 at 7.30 p.m. at the Civic Centre.*

*2. That, should no submissions be received in accordance with S. 223 of the Act, Council authorises the Chief Executive Officer or his delegate:*

*a) to publish a Notice of Discontinuance in the Victoria Government Gazette vesting the land in Council;*

*b) upon the vesting of the land in Council, to enter into negotiations for the sale of the land from the road reservation (including the signing and sealing of all relevant documentation required to effect the sale) to the adjoining landowners, predicated on current occupation; and*

*c) to sell the land to the abutting owners at Council's valuation (taking into consideration accrued possessory entitlement and any easements located within part of Road reservation).*

### **INTRODUCTION**

This report proposes that Council commences the statutory procedures to remove the Road reservation from the portions of land occupied by 59 Alvie Road, Mount Waverley (being the portions of Road reservation described as 'B' 'C' and 'D' on the attached Plan of Survey at Attachment 2) and sell the land from the road to the abutting occupying owner.

### **OCCUPATION OF THE ROAD RESERVATION**

The owner of the property known as 59 Alvie Road, Mount Waverley ("the owner") recently lodged an Application with the Land Registry claiming title by adverse possession of the land marked 'B' 'C' and 'D' on the Plan of Survey ("the land"). The land is part of the road known as Miller Crescent being part of the land remaining untransferred in Certificate of Title Volume 6573 Folio 469 registered in the names of

the original subdividers. Miller Crescent and Alvie Roads are now public roads on Council's Register of Public Roads pursuant to the *Road Management Act 2004* ("the 2004 Act").

However, the owner proceeded to lodge an application to the Land Registry claiming adverse possession of the land and Council received a statutory notice from the Title Registration Services on 9 November 2007. Council instructed its solicitors to immediately lodge a Caveat to protect Council's interest in the land and subsequent to this negotiated with the owner that the Application be withdrawn pending Council considering a proposal to commence the procedures to discontinue the road.

There is some doubt as to the precise age of the improvements constructed on the land as depicted in the Plan of Survey. It is possible that some of those improvements may have been in existence for more than 15 years but less than 30 years.

### ***EXTERNAL CONSULTATION***

All relevant Council departments and statutory service authorities have been contacted to ascertain whether or not there are any objections to the removal of the Road reservation from the portion of occupied land. Multinet Gas and Council have assets located within the land. Accordingly, should the discontinuance proceed, it would be on the basis that the easements would be registered at the time of publication of the Victoria Government Gazette Notice.

### ***IMPLEMENTATION***

In accordance with Sections 207A and 223 of the Local Government Act 1989, Council is required to give public notice of its proposal to remove the Road reservation from the portion of road reserve occupied by owner at 59 Alvie Road, Mount Waverley with Council either retaining or selling the land to the occupiers. The public notice will also invite submissions. Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise withdraw the proposal.

Should submissions be received, a Committee of Council will be required to convene to consider submissions and report back to a subsequent meeting of Council for further consideration. If there are no submissions, it is proposed that the Chief Executive Officer or his delegate be authorised on behalf of Council to vest the land in Council and enter into negotiations for the sale of the land to the owner.

### ***CONCLUSION***

Given that the occupation of the road reservation has existed for many years, it is recommended that Council consider commencing the statutory process to remove the road status from the portion of road reservation occupied by 59 Alvie Road, Mount Waverley.

Hence it is recommended that Council commence the statutory procedures to remove the Road reservation from the land occupied by 59 Alvie Road Mount Waverley.