

1.5 PROPOSED ROAD DISCONTINUANCE & SALE - 1A JOHNSON STREET, OAKLEIGH

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council:

1. *Notes that following the public consultation process pursuant to section 223 of the Local Government Act 1989, no written submissions were received in respect of the proposed road discontinuance and sale or retention of 1A Johnson Street Oakleigh.*
2. *Discontinues the road located at 1A Johnson Street Oakleigh, being part of the land contained in certificate of title volume 1960 folio 915 and shown as being part of Haughton Road on plan of subdivision no. LP1696 ("the land") by publishing a Notice of Road Discontinuance in the Victoria Government Gazette.*
3. *Notes that once the road has been discontinued, an application will be submitted to Land Registry to register the land in Council's name.*
4. *Notes that the Director of City Development in accordance with Council's resolution of 31 July 2018, will engage in without prejudice discussions with VicTrack regarding the potential terms of sale of the land to VicTrack and the future use and development of both the land and VicTrack's adjoining land known as 1 - 15 Johnson Street, Oakleigh.*
5. *Notes that the outcomes of the discussions with VicTrack will be reported back to Council for consideration.*

INTRODUCTION

This report proposes that Council proceed with the road discontinuance process at 1A Johnson Street, Oakleigh and commence discussions with VicTrack regarding the potential terms of sale of the site. (Refer Attachments 1 and 2.)

BACKGROUND

Council at its meeting on 31 July 2018 resolved:

That Council:

- 1) *pursuant to Clause 3 of Schedule 10 and section 189(4) of the Local Government Act 1989 ("the Act"), resolves to commence the required statutory procedures to discontinue the road shown in Attachment 1, located at 1A Johnson Street, Oakleigh, being part of the land contained in certificate of title volume 1960 folio 915 and shown as being part of Haughton Road on plan of subdivision no. LP1696 ("the land") and either:
 - a) *sell the land to VicTrack for no less than market value; or*
 - b) *retain the land;**
- 2) *pursuant to Sections 207A and 223 of the Act, directs that public notice of the proposed discontinuance of the Road, and sale or retention of the discontinued Road, be given in the local newspaper and on Council's website; and*

- 3) *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**);*
- 4) *appoints a Committee of Council, comprising the Oakleigh Ward Councillors, to consider any submissions received under Section 223 of the Act at the Civic Centre at a time and date to be fixed and directs that following any hearing of submissions by the Committee of Council, a further report shall be submitted to Council for consideration.*
- 5) *note that should no submissions be received, Council's Appointed Officer will report back to Council to consider whether to proceed with the proposed Road discontinuance and sale or retention of the discontinued Road referred to above at points (1) to (3) above;*
- 6) *subject to the outcome of the proposed discontinuance of the Road and sale process, authorises the Director of City Development to engage in without prejudice, discussions with VicTrack regarding the potential terms of a sale of the land to VicTrack and the future use and development of both the land and VicTrack's adjoining land known as 1 - 15 Johnson Street, Oakleigh.*
- 7) *notes that the outcomes of the discussions with VicTrack will be reported back to Council for consideration.*

DISCUSSION

The land which was historically used as part of a road prior to the construction of the Warrigal Road Overpass was categorised as a 'road' under the *Local Government Act 1989 (LGA)* and the *Road Management Act 2004 (RMA)*. As a consequence the land vests in fee simple with Council pursuant to Clause 1(4) of Schedule 5 in the RMA despite the fact that it is still registered in the name of the original subdivider.

Council published a Notice of Proposed Discontinuance and Sale in the Monash Leader and on Council's website commencing on 4 September 2018 and concluding on 12 October 2018 inviting written submissions regarding the proposal. No written submissions were received.

The road status of the land can only be extinguished if the road is formally discontinued under Clause 3 of Schedule 10 to the LGA or pursuant to the RMA procedures. The next step in this process involves Council resolving to discontinue the road and either sell or retain the land. Publication of a Notice of Road Discontinuance in the Victoria Government Gazette will then follow to discontinue the road.

Once the road has been discontinued, Council can then proceed to sell or retain the land comprising the discontinued Road (**the Land**), in accordance with the *Local Government Act 1989*. Application is then made to Land Registry to register the land in Council's name.

The discontinuance of the road will facilitate Council in engaging in without prejudice discussions with VicTrack regarding the possible terms of sale of the land to VicTrack and the future use and development of both the land and VicTracks Land at 1 – 15

Johnson Street Oakleigh. The outcome of the discussions with VicTrack will be reported back to Council for consideration.

Preliminary discussions have taken place with VicTrack regarding the proposed development of their site at 1 - 15 Johnson Street Oakleigh (**VicTrack Land**) which abuts the southern boundary of the Land. The VicTrack Land and the land form part of an island of land which is constructed as a public car park and surrounded by Warrigal Road, Haughton Road, Johnson Street and Mill Road.

Should Council following the completion of the road discontinuance, propose to sell the land to VicTrack (or any third party), consideration must be given to the principles outlined in the *Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land* that should be addressed before deeming that the land is surplus to Council's requirements and offering it for sale. These guidelines set out a range of considerations for the sale of Council land, including offering the land for its highest and best use and presenting the land to expose its best attributes would form part of any analysis by Council prior to considering selling the land.

The Guidelines also provides that Council should only sell land by private treaty where there are compelling reasons for Council to not utilise a public procurement process for the sale of the land. As an example of circumstances where a private treaty transaction is appropriate, the Guidelines refers to the sale of a discontinued road where the only viable purchasers are the adjoining owners.

In this case, it is considered that there are compelling reasons to treat privately with VicTrack, on the basis that the land and the VicTrack land are constructed and used as part of an island car park, and that VicTrack is the owner of the only privately-owned land abutting the land.

CONSULTATION

The Public consultation process which commenced on 04 September 2018 has now been satisfactorily concluded.

The public notification indicated that if the road is discontinued, Council proposes to either sell the land by private treaty to VicTrack for no less than market value or retain the land.

Following Council resolving to discontinue the road, a notice to the community of the Road Discontinuance at 1A Johnson Street Oakleigh will be published in the Victoria Government Gazette. Following this, it is proposed to commence discussions with VicTrack regarding the future of this land.

FINANCIAL IMPLICATIONS

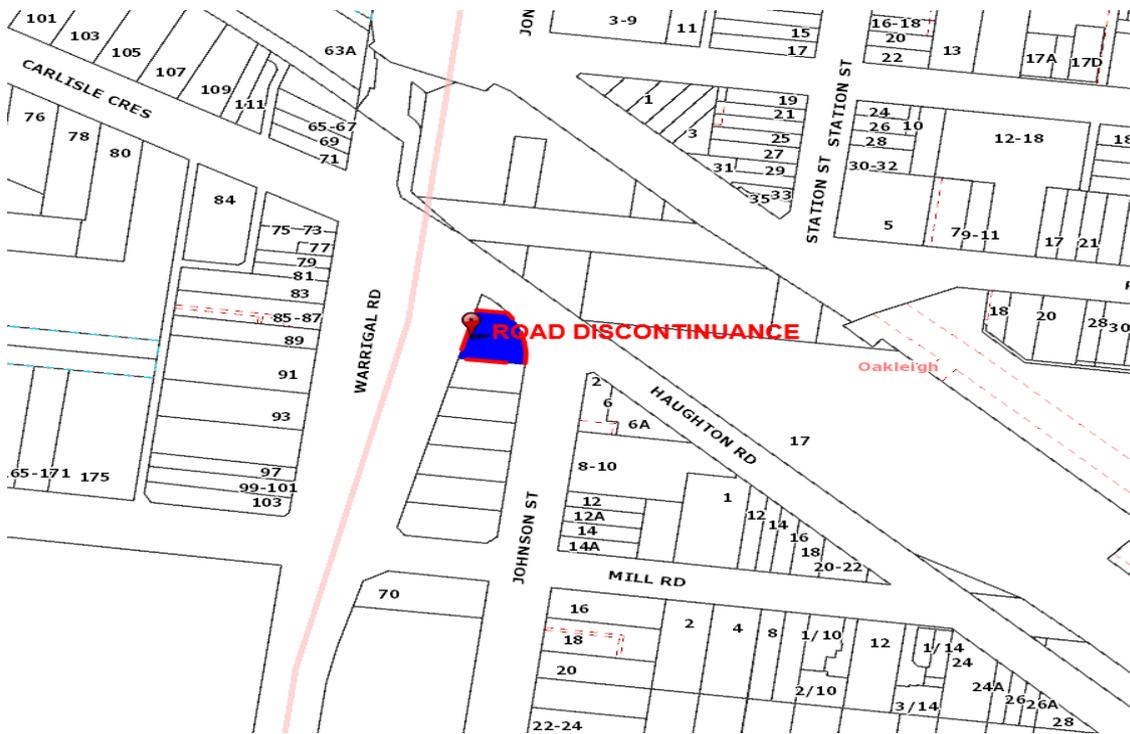
Any sale of land to VicTrack or any other party would be subject to a current market valuation at the time of sale in accordance with the *Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land* (June 2009).

CONCLUSION

Following the public notification process of the proposed road discontinuance and sale or retention of the discontinued road and having regard to no written submissions being received, Council is now in a position to discontinue the road status by publishing a notice of road discontinuance in the Victoria Government Gazette. This will allow Council to continue discussions with VicTrack for the possible sale of the land.

ATTACHMENT 1

Road to be discontinued and potentially sold shown in blue below.



ATTACHMENT 2

Current zoning of Council land at 1A Johnson Street Oakleigh is Road Zone 1 (RDZ1) as shown in pink below. The land would need to be rezoned to an appropriate Commercial zone prior to any sale.

VicTrack owns the abutting 6 lots to the south of Council's land and these allotments would also require rezoning prior to development.

