

## 1.2

**PROPOSED ROAD DISCONTINUANCE AND SALE OF LAND TO ABUTTING LANDOWNERS - MAY PARK AVENUE, SHAW STREET, HIGH STREET ROAD AND WARRIGAL ROAD ASHWOOD**

Responsible Director: Peter Panagakos

**RECOMMENDATION**

*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 and the Mayor 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, the Committee of Council report back to Council on its proceedings and a summary of the hearings following the Section 223 process and seek a decision on whether or not to proceed to discontinue the Road.*

## **INTRODUCTION**

Council has received requests from property owners to purchase a portion of unused road abutting their properties at 7-11 May Park Avenue, 1, 3 & 7B Shaw Street, 42-48 High Street Road and 549-557 Warrigal Road Ashwood. This unused road is shown coloured green on Attachment 1.

For Council to progress these requests, it will need to first commence the statutory procedures in accordance with the *Local Government Act (Vic) 1989 (LGA)* to remove the road status from the road (**Proposal**).

The road status may be extinguished if the road is formally discontinued under clause 3 of Schedule 10 to the LGA. Once the road has been discontinued, Council can then proceed to subdivide and sell the land from the road, subject to Council complying with its obligations under the LGA.

This report recommends that Council agree to commence the statutory procedures to remove the road status from the unused road on the basis that it is not used for vehicular or pedestrian purposes and sell the land to the abutting property owners.

## **BACKGROUND / DISCUSSION**

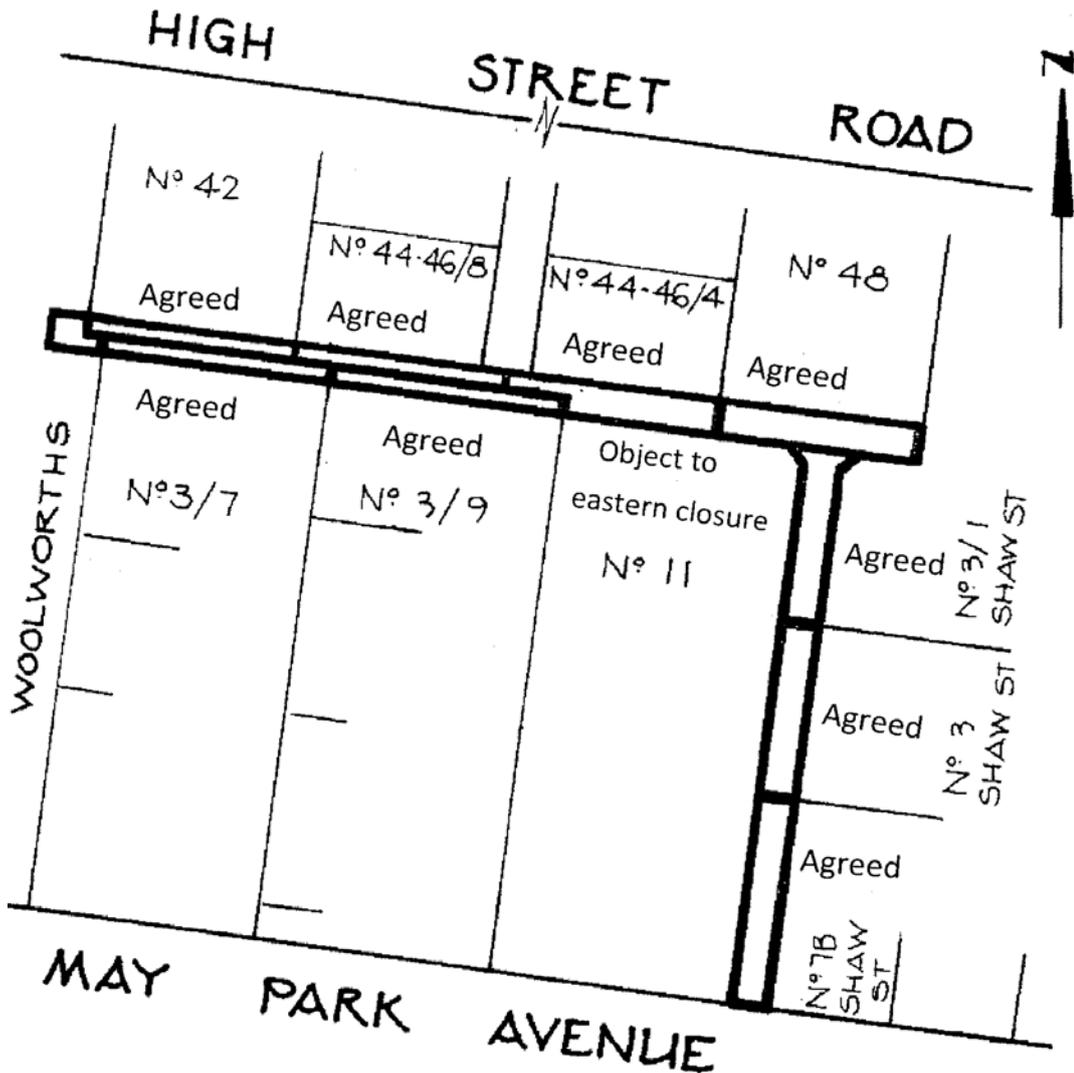
### **The Road**

The road was created on Plan of Subdivision 2648. It is a 'road' for the purposes of the LGA on the basis that it is known to title as a right of way (section 3(1) of the LGA) (**Road**). Accordingly, Council has statutory power to remove the road status.

The Road is listed on Council's register of public roads (**Register**). It is considered that the Road is no longer reasonably required for general public use as it is not used for vehicular or pedestrian access by the public to access the adjoining properties.

Some property owners abutting the Road have approached Council seeking closure of the Road advising that it no longer serves its original purpose and is not used for vehicular or pedestrian access. Some property owners have also advised that occasionally anti-social behaviour occurs on the Road including graffiti on fences and garage walls.

The owners of properties at 7-11 May Park Avenue, 1, 3 & 7B Shaw Street, 42-48 High Street Road, Ashwood are all interested in purchasing the Land that abuts their respective properties subject to price and final layout. The map below shows the location of the Road and how the Land could be apportioned for sale to interested abutting property owners.



**CONSULTATION**

**Abutting property owners**

Surveys were sent to abutting property owners to understand their need for the Road for its original purpose and if not, their interest in purchasing that part of the Road that abuts their property. The majority of the responses to the survey confirmed that the Road is unused and that there is an interest in purchasing part of it subject to apportionment and price.

Comments received from the survey confirmed that the Road is no longer serving its original purpose and that occasional anti-social behaviour occurs including graffiti on fences and garage walls.

One absentee owner of a development site abutting the Road (11 May Park Avenue) was not supportive to the removal of the road status on the eastern section of the laneway, however indicated that should the proposal to discontinue the Road proceed, the owner may be interested in acquiring a portion of the land that abuts his property subject to price.

In addition to the above, a small portion at the western end of the Road is concreted and gives the appearance that it forms part of the ownership of the abutting Woolworths site, further discussions with Woolworths will take place as part of the potential sale process. (refer Attachment 1).

### **Internal**

Discussions with Council's Engineering and Assets departments have confirmed that the Road is on Council's Public Road Register as a Right of Way and is not considered to be required for public access purposes now or in the future.

Council's Engineers have also advised that if the road status is removed, then an easement for drainage purposes in favour of Council will be required for the full length and width of the land, even though there is no drain currently contained within the land.

This being the case, Council can use its powers as a Road Authority to discontinue the Road and apportion it for sale to the abutting property owners.

Should Council proceed with the proposal then in accordance with the principles outlined in the *Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land*, the following matters should be considered.

<b>Best Practice Consideration</b>	<b>Officer's Response</b>
Ensuring that there is no other use by Council for the land prior to selling or exchange.	The Road is a grassed laneway containing a Yarra Valley sewer pipe and has no other use. A drainage easement will be required.
Ensuring that the land offered for sale is sold at its highest and best use.	The Road is zoned General Residential 2 and is subject to a Vegetation Protection Overlay, the same as the abutting properties. Its highest and best alternative use is for ancillary residential purposes.
Presentation of the land to expose its best attributes.	The Road presents as a well maintained grassed walkway.
The optimum development potential of the land should be considered for sale (this may include a feasibility study).	The optimal development potential for the land is consolidation with the respective abutting properties.
Preparation of a section 173 agreement or other means should Council wish to control the future use of the land.	Not applicable.
Any environmental reports should be obtained where there is a possible contamination and if so, preparing a strategy for its remediation.	Not applicable

**External****Service Authorities**

Service authorities have been consulted and have no objection to the Proposal subject to any easements being provided to protect their assets during the plan of subdivision process.

Yarra Valley Water require an easement for sewerage purposes in favour of Yarra Valley Water Ltd for the entire length and width of the Road should the road status be removed.

Further, should the land from the Road be apportioned between abutting owners then the 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.

**The Statutory Process**

Council's powers to discontinue a Road and sell the land is provided by s.206 & Schedule 10 clause 3(b) of the LGA.

The statutory process includes Council publishing a notice in accordance with s.223 of the Local Government Act that invites written submissions from the public to the proposal to remove the road status and sell the land to the abutting property owners.

Any submitters may request to be heard by a Committee of Council prior to a decision being made to either proceed or not proceed with the proposal.

If submissions are received, a Committee comprising the Mayor and Mount Waverley Ward Councillors will be required to convene to hear those submitters who requested to be heard and consider submissions. Should no submissions be received then the proposal will still be reported back to Council for a decision to proceed or not.

Depending on this process and outcome, a separate process for the sale of any land will be undertaken including meeting all requirements under the Local Government Act.

***FINANCIAL IMPLICATIONS***

Should the Proposal proceed, then a current valuation will be obtained and the land will be sold for its market value or as otherwise agreed.

***CONCLUSION***

A site inspection of the Road indicates that it is grassed and unmade and that it is logical to commence the public consultation procedures for the Road to be discontinued and sold to abutting property owners. Accordingly it is recommended that the public notification to discontinue the Road and subdivide and sell the land be commenced.

**ATTACHMENT 1**  
**LOCALITY PLAN OF ROAD (SHOWN IN GREEN)**

