

1.8 PROPOSED ROAD DISCONTINUANCE AND SALE – PART OF RAILWAY PARADE NORTH, GLEN WAVERLEY

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 in respect of the proposal to discontinue a 671m² parcel of Railway Parade North, Glen Waverley as shown hatched in Attachment 1 to this report being part of the Road on LP13583 contained in certificate of title volume 6527 folio 374 (Road) and selling the land from the Road to the Suburban Rail Loop Authority (SRLA) conditional upon reaching agreement with the SRLA on the terms of sale for the land.*
- 2. Notes that the S.223 Committee met as scheduled at 6:30 pm on Tuesday 14 March 2023 in the Council Chambers, however the committee decided to defer consideration of the matter until 6:30 pm on Tuesday 11 April 2023, having accepted a late submission from Victorian Rail Track (VicTrack) in order to be able to consider it prior to making a recommendation to Council on the matter. VicTrack's submission was subsequently withdrawn meaning there were no valid submissions to consider.*
- 3. Accepts the S.223 Committee's recommendation as follows:*

"That Council proceed with the discontinuance of the Road and the transfer of the discontinued Road to the SRLA (or its nominee), conditional upon:

 - a. Council and the Suburban Rail Loop Authority (SRLA) entering into a binding contract for the sale of the land; and*
 - b. SRLA (or its nominee) entering into a binding agreement to purchase the adjoining land owned by Victorian Rail Track, unless Victorian Rail Track will retain that land and be nominated by SRLA as purchaser of the discontinued Road."*
- 4. Notes the response from Yarra Valley Water and Council's Engineering Department regarding requirement for an easement to protect existing assets and that the plan to be used for the road discontinuance has been updated to reflect this (refer Attachment 2).*
- 5. Pursuant to clause 3 of Schedule 10 to the Local Government Act 1989, authorise the CEO (or her delegate) to:*

- a. *negotiate with SRLA to sell the discontinued Road to SRLA for its market value as determined by an independent valuer and such other terms as reasonably agreed between the parties; and*
- b. *subject to Council entering into a binding agreement with SRLA to sell the discontinued Road to the SRLA (or its nominee) and the SRLA (or its nominee) entering into a binding agreement to purchase the adjoining land owned by Victorian Rail Track (unless SRLA has confirmed in writing that Victorian Rail Track will retain ownership of its adjoining land and be nominated as purchaser of the discontinued Road by SRLA):*
 - i. *publish a Notice of Road Discontinuance in the Victorian Government Gazette (using the Title Plan in Attachment 2) pursuant to Clause 3(a) of Schedule 10 of the Local Government Act 1989 noting Council's decision to discontinue the Road and retain or sell the land to the SRLA (or its nominee); and*
 - ii. *prepare and execute all documents required in connection with, and to give effect to, the discontinuance of the Road and transfer of the land to the SRLA (or its nominee), or the retention of the land if Council and the SRLA are unable to reach an agreement regarding the sale of that land to the SRLA.*

INTRODUCTION

This report considers the outcome of the public notification process pursuant to S.223 of the Local Government Act 1989 for the discontinuance of a 671m² parcel of Railway Parade North, Glen Waverley (Proposal).

BACKGROUND

On 31 January 2023, Council considered a report on the proposed discontinuance of a 671m² parcel of Railway Parade North, Glen Waverley on request from the Suburban Rail Loop Authority (SRLA) who propose to include this 671m² portion of road in the development site for a multi-deck car park as part of the Glen Waverley Station Precinct Suburban Rail Loop project.

Council resolved:

"That Council:

1. *Notes that the Suburban Rail Loop Authority (SRLA) have requested Council to consider removing the road status from the 671m² parcel of Railway Parade North, Glen Waverley as shown hatched in Attachment 2 to this report, being part of the Road on LP 13583 contained in certificate of title volume 6527 folio 374 (**Road**) and selling the land from the Road to the SRLA.*

2. *Notes that an existing public footpath exists on this portion of Railway Parade North that is of interest to the SRLA and that the SRLA have confirmed that as part of the development of the new multi-level car park, the SRLA will construct a new public footpath on that part of the developments site as shown coloured purple on the plan in Attachment 1 to this Report. The land containing this footpath will be owned and managed by Council.*
3. *Given items 1 to 2 above, resolves to commence the statutory procedures pursuant to Clause 3 of Schedule 10 of the Local Government Act 1989 ('the Act') to consider discontinuing the Road and vesting the land from the Road in Council ('the Proposal') and saving any easement rights in favour of statutory authorities that may have assets located in the Road.*
4. *Pursuant to Sections 207A and 223 of the Act, directs that public notice of the Proposal be given in locally circulating newspaper and on Council's website.*
5. *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 the Proposal ('Appointed Officer').*
6. *Appoints a Committee of Council, comprising of the Mayor and Glen Waverley Ward Councillors, to consider any submissions to the Proposal received under section 223 of the Act at 6:30pm on 14th March 2023 at the Monash Civic Centre, 293 Springvale Road, Glen Waverley, or at such a later time and date as the Chief Executive Officer may determine.*
7. *Council will consider the Committee of Councils report on its proceedings and a summary of any hearing and determine whether to proceed with the Proposal at its Ordinary Meeting on March 28, 2023, or such a later time and date as the Chief Executive Officer may determine.*
8. *Notes that the completion of the Proposal is also subject to Council and the SRLA reaching agreement on the terms of the contract of the sale for the land.*

CARRIED"

Public Notification

In accordance with item 4 of the above 31 January 2023 Council resolution, a public notice was published in the Age Newspaper and on Council's website on 4 February 2023 calling for submissions on the Proposal to discontinue the 671m² parcel of Railway Parade North, Glen Waverley to be received by close of business on 3 March 2023 and noting that the

Committee appointed by Council to hear and consider any submissions will meet in the Council Chambers at 6:30pm on 14 March 2023.

Public Response

There were no submissions received to the Proposal during the consultation period (i.e. by close of business on 3 March 2023). However, a late submission was received from Victorian Rail Track (VicTrack) at 5:25pm on 14 March 2023 just prior to the scheduled meeting of the Committee.

S.223 Committee Meeting – 14 March 2023

The S.223 Committee met at 6:30pm on 14 March 2023 in the Council Chambers to consider the outcome of the public notification process and agreed to accept the late the submission from VicTrack and subsequently determined to defer its consideration of the matter until 6:30pm on 11 April 2023 in the Council Chambers in order to consider its contents.

The Mayor Cr Tina Samardzija and the Glen Waverley Ward Councillors comprised the Committee appointed by Council.

Following the committee meeting on 14th March 2023, a letter was sent to VicTrack confirming the change of time for the S.223 Committee meeting. VicTrack were asked if they wished to be heard.

At 2:54pm on 11 April 2023, VicTrack withdrew its submission to the matter. Accordingly, there were no submissions for the committee to consider.

S.223 Committee Meeting - 11 April 2023

The S.223 Committee met again at 6:30pm on 11 April 2023 in the Council Chambers to consider the outcome of the public notification process.

The Mayor Cr Tina Samardzija and Councillor Nicky Luo comprised the Committee appointed by Council. Councillor Geoff Lake was an apology.

The agenda of the of S.223 Committee was to consider any submissions received.

The outcome of the Committee was to recommend to Council the following:

- (1) That Council proceed with the discontinuance of the Road and the transfer of the discontinued Road to the SRLA (or its nominee), conditional upon:
 - a. Council and the Suburban Rail Loop Authority (SRLA) entering into a binding contract for the sale of the land; and*
 - b. SRLA (or its nominee) entering into a binding agreement to purchase the adjoining land owned by Victorian Rail Track,**

unless Victorian Rail Track will retain that land and be nominated by SRLA as purchaser of the discontinued Road.

Status of sale of the land to the SRLA

Whereas the SRLA have advised officers that they intend to purchase the discontinued road, the adjoining VicTrack land and the adjoining Council freehold land to form the development parcel, until such time as binding contracts are entered into between Council and the SRLA, it is possible that the State Government may require a different landholding structure to be implemented, such as VicTrack acquiring the discontinued road and consolidating it with the VicTrack Land, or another State Government agency acquiring both the discontinued road (as nominee of SRLA) and the VicTrack Land.

Next Steps with the Road Discontinuance Process

Given the above situation regarding the sale of the land to the SRLA, the next step of publishing a notice in the Victoria Government Gazette will not occur until Council enters into a binding agreement with SRLA to sell the discontinued Road to the SRLA (or its nominee) and the SRLA (or its nominee) entering into a binding agreement to purchase the adjoining land owned by Victorian Rail Track (unless SRLA has confirmed in writing that Victorian Rail Track will retain ownership of its adjoining land and be nominated as purchaser of the discontinued Road by SRLA).

To date, negotiations with the SRLA are at the stage of having prepared joint valuation instructions to the Victoria Valuer General to determine the market value of the land the subject of this report. At the time of writing this report, the valuation report has not been received.

Service Authorities & Easement Requirements

Item 3 of the report to Council on this matter on 31 January 2023, noted that Council, in considering the discontinuance of the road, would also be *“saving any easement rights in favour of statutory authorities that may have assets located in the Road.”*

At the same time as publishing the public notice, letters were sent to service authorities (including Council’s engineering department) requesting a response to the Proposal and seeking any requirements for easements rights to be saved for assets located in the Road.

Yarra Valley Water requested an easement to protect their sewerage asset and Council’s engineering department requested an easement to protect drainage assets. The plan used for the public notice has been updated to reflect these easement requirements (refer Attachment 2). This plan will be used for the Victoria Government Gazette in due course.

POLICY IMPLICATIONS

There are no Council policy implications with proceeding to discontinue the Roads.

CONSULTATION

Consultation regarding the Proposal has been completed in accordance with Council's statutory obligations pursuant to Section 223 of the Local Government Act 1989. No further consultation is required.

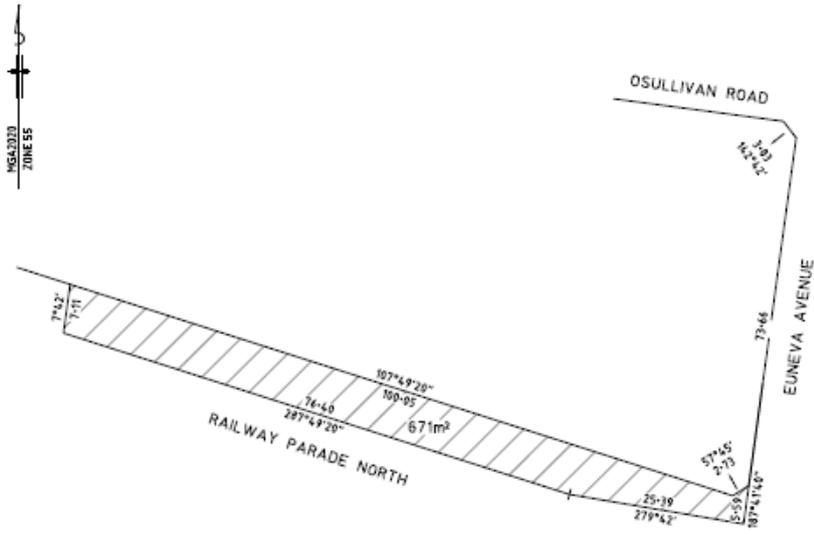
FINANCIAL IMPLICATIONS

All expenses associated with the Proposal will be reimbursed by SRLA and Council can expect to receive the market value in due course.

CONCLUSION

There were no submissions received to the Proposal. Council can proceed to negotiate the terms of sale for the land with the SRLA to help facilitate a new multi-deck car park. Upon reaching agreement with the SRLA on the terms of sale, a notice will be published in the Victoria Government Gazette and transfer of land documentation prepared.

ATTACHMENT 1
Plan used for Public Notice



PLAN FOR ROAD DISCONTINUANCE

ATTACHMENT 2
Updated Plan showing easements

TITLE PLAN		EDITION 1	TP971033D	
LOCATION OF LAND COUNTY: BOURKE PARISH: MULGRAVE TOWNSHIP: - SECTION: - CROWN PORTION: 75 (PT) TITLE REFERENCE: - LAST PLAN REFERENCE: R1LP13583 MGA 2020 CO-ORDINATES: E 338330 ZONE 55 (approx. centre of plan) N 5806030 GDA 2020 DEPTH LIMITATION: NIL			NOTATIONS:	
			THIS PLAN HAS BEEN PREPARED BY LAND USE VICTORIA FOR TITLE DIAGRAM PURPOSES.	
EASEMENT INFORMATION				
SUBJECT LAND	PURPOSE	WIDTH (metres)	ORIGIN	LAND BENEFITED/IN FAVOUR OF
E-1 E-2	SEWERAGE DRAINAGE	1.83 3	THIS PLAN THIS PLAN	YARRA VALLEY WATER LTD. MONASH CITY COUNCIL
ORIGINAL SHEET SIZE: A3 SCALE 1:500 LENGTHS ARE IN METRES		CERTIFICATION BY SURVEYOR < LEAVE BLANK >		SHEET 1 OF 1
FILE REF: SS-001934 SURVEYORS REF: SGV-003610_A DRAWN: QJ 06/02/2023 EXAMINED: KN		< SURVEYORS NAME / VERSION NO >		< LEAVE BLANK >
SURVEYOR-GENERAL VICTORIA DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING		< SURVEYORS NAME / VERSION NO >		< LEAVE BLANK >