

1.5 PROPOSED ROAD DISCONTINUANCE – JACK EDWARDS RESERVE, OAKLEIGH

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 road, being the carriageway easement registered by Dealing No.1191646 (Road), which forms part of Jack Edwards Reserve, Oakleigh (Reserve) on the basis that it is no longer reasonably required for road purposes, and the land from the Road should be retained by Council and consolidated with the various parcels of land forming the Reserve to allow the works required by the Jack Edwards Reserve Pavilion and Grandstand Development.*
2. *Notes that the S.223 Committee scheduled to meet on Tuesday April 11 2023 at 6.40pm to hear and consider any submissions received in respect of discontinuing the Road was deferred in light of a late submission from VicTrack received via email on Tuesday April 11 at 3.25pm; and further notes that the S.223 Committee met on Tuesday May 16 at 6.30pm, being the deferred date and time.*
3. *Accepts the S.223 Committee's recommendation as follows:*

That Council proceed with the discontinuance of the Road and retain the land from the Road to be consolidated with the surrounding Council land that forms the Reserve.

4. *Authorises the Chief Executive Officer to:*
 - a.
 - i. *publish a Notice of Road Discontinuance in the Victorian Government Gazette pursuant to Clause 3(a) of Schedule 10 of the Local Government Act 1989 noting Councils decision to discontinue the Road and retain the land; and*
 - ii. *prepare and lodge with Council an application for certification of a plan of subdivision which will consolidate the land to be retained by Council with the surrounding Council land that that forms the Reserve; and*
 - b. *prepare and execute all documents required in connection with, and to give effect to, the discontinuance of the Road and the consolidation of the land from the Roads with the adjoining Council land that forms the Reserve.*

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 road which forms part of Jack Edwards Reserve (**Reserve**), being the carriageway easement registered by Dealing No.1191646 which encumbers part of the Reserve and which benefits VicTrack (**Road**).

BACKGROUND

On 28 February 2023, Council considered a report on the proposed discontinuance of a road which forms part of the Reserve as part of the works required by the Jack Edwards Reserve Pavilion and Grandstand Development (**Development**) and resolved as follows:

“That Council:

- 1. Notes that a parcel of Council-owned land which forms part of Jack Edwards Reserve, 22-38 Edward Street, Oakleigh is encumbered by a carriageway easement in favour of VicTrack as registered by Dealing 1191646 (‘Easement’), being the land known to title as Lot 1 on TP699239 as described in certificate of title volume 2131 folio 152 (‘Land’), further noting that the Easement is defined as a Road under the Local Government Act 1989 (‘Act’).*
- 2. Notes that the proposed Jack Edwards Reserve Pavilion and Grandstand Development includes significant works on the Land described in item 1 above and requires the Land to be free from the Easement to allow for these future works.*
- 3. Notes that VicTrack have advised they are unable to surrender the Easement and the only options they made available to Council are as follows:*
 - a. Council to purchase the Easement at market value.*
 - b. For VicTrack to lodge a formal exemption application with the Valuer General’s Office to sell the Easement to Council for a reduced or nil market value understanding:*
 - i. Council must pay a fee of \$2,000.00 for the exemption application with no guarantee of a successful outcome and that due to resourcing Council can expect significant delays in progressing the above and that there is no guarantee of the outcome.*
- 4. Given items 1 to 3 above, and in particular the uncertainty with the proposed VicTrack process, it is open to Council to resolve to commence the statutory procedures pursuant to Clause 3 of Schedule 10 and Sections 207A and 223 of the Act to remove the Road status, and thus remove the Easement encumbrance from the Land, on the basis that this is the most efficient and cost-effective method to remove the Easement (‘Proposal’).*

5. *Given item 4 above, resolves to commence the statutory procedures pursuant to Sections 207A and 223 of the Act to consider discontinuing the Easement (as a Road) ('the Proposal').*
6. *Gives public notice of the Proposal in accordance with Sections 207A and 223 of the Act in a daily newspaper and on Council's website from 3 March 2023 and invite submissions on the Proposal.*
7. *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').*
8. *Appoints a Committee of Council, comprising of the Mayor and Oakleigh Ward Councillors, to consider any submissions received to the Proposal under section 223 of the Act at 6:40pm on 11th April 2023 at the Monash Civic Centre, 293 Springvale Road, Glen Waverley.*
9. *Notes that following the meeting referred to in item 8 above and in consideration of any submissions, that the Committee of Council will provide a report back to Council on its considerations including a summary of any submissions and make a recommendation to Council on whether or not to proceed with the Proposal.*

CARRIED"

Public Notification

In accordance with item 6 of the 28 February 2023 Council resolution, a public notice advising of Council's intention to discontinue the Road was published in the Age Newspaper and on Council's website on 4 March 2023 calling for submissions on the proposal to be received by close of business on 3 April 2023.

Public Response

One late submission was received by VicTrack at 3.25pm on 11 April 2023 via email.

There were no further submissions received.

Submission from VicTrack

The submission from VicTrack was a request for additional time from Council to allow VicTrack to seek further advice regarding the proposed discontinuance of the Road from the Victorian Government Land Monitor (VGLM).

VicTrack also advised that they are bound by The Land Transactions Policy and Guidelines and requested that Council not to extinguish the easement [discontinue the Road] without VicTrack's consent.

VicTrack subsequently responded to Council on 2 May 2023 advising the following:

1. VicTrack consents to Council extinguishing their easement [discontinuing the Road].
2. The Road has been declared as surplus by VicTrack.
3. VicTrack does not wish to attend the s223 Committee Meeting on 16 May 2023.
4. VicTrack requests notification from Council of the gazettal of the discontinuance of the Road (should Council resolve to proceed) to formally remove their interest in the Road and finalise this matter internally.
5. VicTrack thanks Council for the extension of time to allow them to seek external advice on this matter.

S.223 Committee Meeting

The S.223 Committee had been scheduled for 6:40 pm Tuesday 11 April 2023 in the Council Chambers. However, given the late submission was received from VicTrack, the Committee agreed that the submission should be noted and the meeting deferred until 16 May 2023 in order to consider its contents.

The S.223 Committee subsequently met at 6.30pm on Tuesday 16 May in the Council Chambers.

The Mayor and the Oakleigh Ward Councillors comprised the Committee appointed by Council.

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

The recommendation of the Committee was:

- (1) That Council proceed with the discontinuance of the Road and retain the land from the Road to be consolidated with the surrounding Council land that forms the Reserve.

POLICY IMPLICATIONS

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

CONSULTATION

Consultation regarding the discontinuance of the Roads 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

Financial implications are limited to the costs of preparation of land survey documentation, planning and lodging fees of the Plan of Consolidation at the Land Titles Office. This is estimated at \$8,200.40 (excl. GST) and funding for this work is provided for in the Development project budget.

CONCLUSION

The proposal to discontinue the Road and consolidate the land with the adjoining Council land that forms the Reserve will serve to resolve the land status situation and avoid any planning complications to achieve the goals of the Development.