5.11 PROPOSED DEVIATION AND SALE OF PART OF THE RIGHT OF WAY ABUTTING 1611-1615 DANDENONG ROAD AND 3-5 LEVER STREET OAKLEIGH (TRAF147:FBG:SY)

Ward: Oakleigh

Responsible Director: Paul Kearsley

INTRODUCTION

This report proposes that Council:

- commences negotiations with the abutting owners of 1611-1615 Dandenong Road and 3-5 Lever Street, Oakleigh (“the Owners”) and the preparation of any other documentation required to give effect to a proposal to deviate the existing right of way abutting 1611-1615 Dandenong Road and 3-5 Lever Street, Oakleigh (as generally shown on Attachment 3) and sell to Adinadis Pty Ltd of 3-21 Lever Street Oakleigh that part of the right of way discontinued by such road deviation proposal;

- resolves to give public notice of the proposed road deviation and to sell the whole or part of the discontinued road created by such proposal pursuant to Clause 2 of Schedule 10 and sections 206, 207 and 223 of the Local Government 1989 (“the Act”);

- establishes a Special Committee of Council consisting of the Oakleigh Ward Councillors to consider any submissions received in respect of such deviation proposal pursuant to Section 223 of the Local Government Act 1989 at a meeting to be held at a time and place to be nominated by the Chief Executive Officer.

- in the event that no submissions are received, delegates authority to the Chief Executive Officer or his delegate to publish a notice in the Victorian Government Gazette of the road deviation and to sign and seal all documentation associated with the road deviation and the sale of the whole or part of the discontinued road created by such road deviation, to Adinadis Pty Ltd; and

- receive a further report following the completion of the procedures under section 223 of the Local Government act 1989 if submissions are received.

RECOMMENDATION

That Council,

1) authorises the Chief Executive Officer or his delegate to negotiate the terms and conditions of a contract of sale and any other documentation required to give effect to a proposal to deviate the existing right of way abutting 1611-1615 Dandenong Road and 3-5 Lever Street, Oakleigh (as generally shown on Attachment 3) and sell to Adinadis Pty Ltd of 3-21 Lever Street Oakleigh that part of the right of way discontinued by such road deviation proposal;

2) resolves to give public notice of the proposed road deviation and to sell the whole or part of the discontinued road created by such proposal pursuant to Clause 2 of Schedule 10 and sections 206, 207 and 223 of the Local Government 1989;

3) establishes a Special Committee of Council consisting of the Oakleigh Ward Councillors to consider any submissions received in respect of such deviation proposal pursuant to Section 223 of the Local Government Act 1989 at a meeting to be held at a time and place to be nominated by the Chief Executive Officer.

4) in the event that no submissions are received, delegates authority to the Chief Executive Officer or his delegate to publish a notice in the Victorian Government Gazette of the road deviation and to sign and seal all documentation associated with the road deviation and the sale of the whole or part of the discontinued road created by such road deviation, to Adinadis Pty Ltd; and

5) receive a further report following the completion of the procedures under section 223 of the Local Government act 1989 if submissions are received.

BACKGROUND & DISCUSSION

Following a request from Adinadis Pty Ltd (“Adinadis”), the owner of 1611-1615 Dandenong Road and 3-5 Lever Street, Oakleigh for the purchase of the existing road which divides its above properties, Council resolved on 28 June 2011, to commence the statutory
procedures to discontinue the existing road and sell the land from the existing road to Adinadis at Council’s valuation and having regard to any land transfer. It was also proposed that owners pay for Council’s expenses for this land transaction. (A copy of this Council report is on Attachment 4).

Following advice from Council’s solicitors the proposal was not advertised as they considered that a more appropriate process for Council to proceed with is by Council exercising its power to deviate Roads pursuant to Clause 2 of Schedule 10 and sections 206, 207 and 223 of the Act.

Under this proposal Council will need to determine the new alignment for the deviated road prior to commencing the statutory processes for the proposed road deviation and sale of the subsequent discontinued section of road.

It should also be noted that a sewer exists within the section of road to be deviated. This sewer will need to be relocated to the satisfaction of Yarra Valley Water.

Should the proposal proceed, it would be on the basis that all the properties owned by Adinadis and the road land to be purchased must be consolidated into one and that satisfactory agreements on the purchase price and costs associated with construction of the new road and the relocation of the sewer must be reached.

The ROW is zoned Industrial IN1Z within the Monash Planning Scheme. This is the same zoning as all the abutting properties.

Council officers consider this proposal is acceptable, as the other abutting properties which currently utilise the existing road could continue to use and access their properties via the new road alignment.

It is also considered appropriate that negotiations commence with Ardinadis, the owners of the land being encumbered by the proposed road deviation, on the details of the proposal prior to proceeding with the statutory procedures for the road deviation.

**FINANCIAL**

An independent valuation is required for both parcels of the land, if the proposal proceeds.

**IMPLEMENTATION**

A notice of Council’s intention will be placed in the Monash Weekly and Oakleigh Monash and Waverley Leader newspapers and at the site. Nearby property owners and occupiers will also be advised. The public notice will invite submissions in accordance with Section 223 of the Act and submitters may request to be heard by Council prior to a decision being made.

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.

If Council resolves to proceed with the proposal a Notice will be published in the Victorian Government Gazette vesting the New Road and Existing Road in Council and then will permit it to proceed with the sale of the discontinued section of road.

**CONCLUSION**

It is considered appropriate for Council to commence negotiations with Adinadis, the owners of the land being encumbered by the proposed road deviation, on the terms and conditions for a contract of sale in order to give effect to the proposal to deviate the existing right of way abutting 1611-1615 Dandenong Road and 3-5 Lever Street, Oakleigh, prior to proceeding with the statutory procedures for the road deviation of the existing road to facilitate a sale of the land.