

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

Responsible Director: Peter Panagakos

RECOMMENDATION*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) *Notes 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.*

INTRODUCTION

This report proposes that Council commence the statutory procedures pursuant to sections 189, 207A and 223, and clause 3 of Schedule 10, to *Local Government Act 1989* (Vic) (**LGA**) to discontinue the road known as 1A Johnson Street, Oakleigh (**land**) (Refer Attachment 1) and upon completion of the discontinuance process either:

- (a) sell the land to VicTrack for not less than market value; or
- (b) retain the land and apply to the Land Registry to register Council as proprietor of the land.

BACKGROUND

The land is contained in Certificate of Title Volume 1960 Folio 915, being that part of Road R1 on Plan of Subdivision No. LP1696 (**Plan**) shown as 'Haughton Road' on the plan of subdivision.

Haughton Road originally linked Johnson Street to Warrigal Road prior to construction of the Warrigal Road Overpass approximately 50 years ago.

Since that time, part of Haughton Road has ceased to operate as a road, and the land was subsequently developed and used as a car park for rail commuters given its close proximity to the train station. Whilst the land remains on title as a road it also remains in the name of the original subdivider of the land.

DISCUSSION

As the land is known to title as a road and was historically used as a road (prior to the construction of the Warrigal Road Overpass), the land is considered a 'road' under the 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 to the RMA despite the fact that it is still registered in the name of the original subdivider.

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. Once the road has been discontinued, Council can then proceed to sell or retain the land comprising the discontinued Road (**land**), in accordance with the Local Government Act. If Council decides to retain the land, the land can be registered in Council's name following application to Land Registry.

The discontinuance of the road would facilitate Council in progressing discussions with VicTrack regarding any future development and usage of the VicTrack Land, noting that the land and VicTrack's Land are constructed as car parking and currently used for commuter car parking.

Sale considerations

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.

If, following the proposed road discontinuance, Council proposes 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.

Consideration and assessment of these principles is set out below:

Best Practice Consideration	Response
Ensuring that there is no other use by Council for the Land prior to selling.	The land is being used for commuter parking and is not currently used as a road. Council does not provide commuter parking.
Ensuring that the Land offered for sale is sold at its highest and best use.	The highest and best use of the land having regard to its location is for commercial purposes in accordance with Council's Structure Plan for Oakleigh. Rezoning of the land will be considered following the road discontinuance and sale process. It should be noted that the land is currently zoned Road Zone – Category 1, and accordingly, VicRoads would need to be consulted as a referral authority in respect of any proposal to rezone the land. Most of VicTrack Land is also zoned Road Zone – Category 1.
Presentation of the Land to expose its best attributes.	The land may benefit from being consolidated with the abutting VicTrack Land rather than being developed in isolation.
The optimum development potential of the Land should be considered for sale (this may include a feasibility study).	As noted above, the land, along with the VicTrack Land, would need to be rezoned to Commercial 1 Zone (or some other suitable zone) prior to the sale of those parcels on the open market, consistent with Council's Structure Plan for Oakleigh. Any proposal to rezone the land (and/or the VicTrack land) will be the subject of separate consideration by Council.
Preparation of a section 173 agreement or other means should Council wish to control the future use of the Land.	If the land is sold, then it may be sold with or without a section 173 Agreement depending on the relevant considerations at the time of sale. Such sale would also be subject to the usual planning considerations.
Any environmental reports should be obtained where there is a possible contamination and if so, preparing a strategy for its remediation.	Environmental reports are not required as the land will not be rezoned to a more sensitive use.

CONSULTATION

The road discontinuance and sales process involves publication of a public notice of the proposed road discontinuance and sale in the local newspaper and on Council's website. The public notice will invite submissions in accordance with Section 223 of the LGA for persons to make a submission on the proposal to discontinue the road and to sell or retain the land, should they wish. 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 proposed discontinuance and sale.

If submissions are received, a Committee of Council will be required to convene to consider submissions.

Once this process has been completed, a further report will be presented to Council for consideration. There have been preliminary discussions with representatives from VicTrack regarding their plans for the VicTrack Land and early indications are that VicTrack

may be interested in purchasing the land, if the road is discontinued and if Council resolves to sell the land to VicTrack.

Any such agreement would be subject to Council and VicTrack agreeing to terms of sale which are acceptable to both parties. If the parties cannot agree to terms, then the proposal is that Council would retain the land and this matter would be returned to Council for further consideration in respect of the proposal for the land (for example, whether it can be sold via a public process).

It is noted that rezoning of the land is likely to be required either prior to sale of the land to VicTrack or a third party, or a condition of sale of the land (a copy of the current zone map is set out on Attachment 2.)

The appropriate zoning would need to be considered and confirmed at the time of a proposed sale. However, the underlying zone for the surrounding land is Commercial 1 Zone. This is consistent with the Structure Plan for Oakleigh and would be subject to separate consideration by Council and a separate public notification process.

FINANCIAL IMPLICATIONS

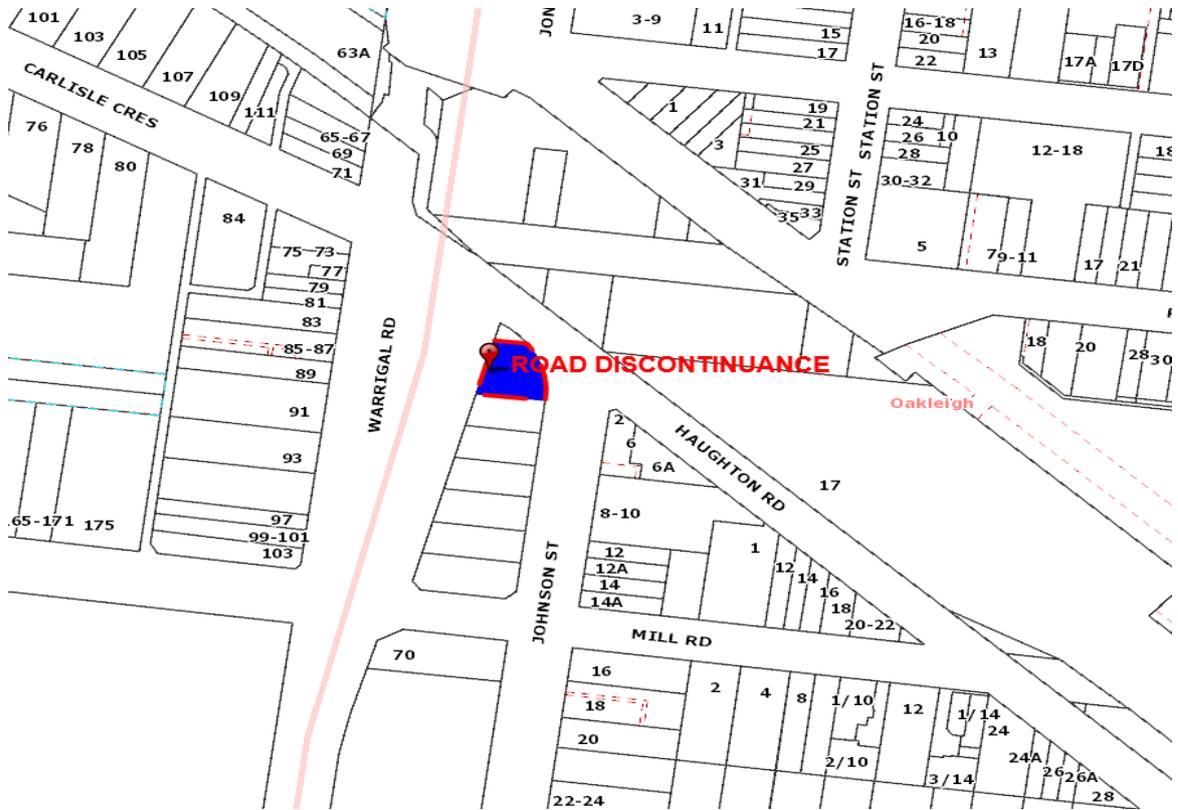
Costs associated with the proposed Road discontinuance process will be met through the existing budget.

CONCLUSION

As the land is not constructed or used as a road, it is recommended that Council discontinue the road. Once the road has been discontinued Council can then either retain ownership of the land or commence initial discussions with Victrack for the potential sale of the land.

ATTACHMENT 1

Road to be discontinued shown in blue below.





ATTACHMENT 2

Zoning map indicating that 1A Johnson Street Oakleigh is Zoned Road Zone 1.

