



14.2 **PROPOSED DISCONTINUANCE AND SALE OF ROAD
ABUTTING 26 MOORE STREET, ELWOOD**

EXECUTIVE MEMBER: **CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND
CORPORATE SERVICES**

PREPARED BY: **LYANN SERRANO, PROPERTY ADVISOR**

1. PURPOSE

- 1.1 To seek Council's approval to complete the statutory procedures pursuant to the *Local Government Act 1989 Vic (Act)* and finalise the discontinuance and sale of road abutting 26 Moore Street, Elwood, being part of the land contained in certificate of title volume 11170 folio 096 (**Road**).

2. EXECUTIVE SUMMARY

- 2.1 The Road is unconstructed and is approximately 26 square metres.
- 2.2 The Road is enclosed within the property boundary of 26 Moore Street, Elwood and is not available for public use.
- 2.3 The Road has all at times been incorporated within the property at 26 Moore Street, Elwood and the current fence line at the rear of the property (which runs along the existing Road) has been in place for an extended period of time.
- 2.4 The Road is not registered in Council's name. It is part of the land contained in certificate of title volume 11170 folio 096 registered in the name of Alfred Dean Hodgson. It is known to title and shown on the Plan of Survey as a road and indicated as a right of way on Plan of Subdivision LP 2244, as per Attachment 1.
- 2.5 The Road is not on Council's Register of Public Roads therefore it is not known as a public road.
- 2.6 There is also no known evidence that the Road is a public highway at common law through dedication of the land in the road as road and an acceptance by the public as road.
- 2.7 As the Road is neither considered to be a public road nor a public highway and the Road is not registered in Council's name, the Road is not protected from adverse possession. This is a legal means of acquiring the land through long term exclusive and continuous possession.
- 2.8 The Road however is deemed as a 'road' for the purposes of the Act, on the basis that the Road is known to title as a road and therefore is a 'right of way' (section 3 of the Act).
- 2.9 Council has statutory power to consider discontinuing the Road.
- 2.10 The owners of 26 Moore Street, Elwood have provided proof in support of their claim that they have accrued rights of adverse possession in the subject Road.
- 2.11 Where Council is satisfied possessory rights apply, the purchase price for the Road is set at \$7,500 plus GST, to be adjusted annually to Consumer Price Index (CPI), plus Council's costs in relation to the proposed discontinuance and sale as per Council's



Discontinuance and Sale of Roads Policy. In this case, it is \$8,000 plus GST plus incidental costs incurred by Council.

- 2.12 On 18 July 2018, Council resolved to commence the statutory procedures to discontinue the Road pursuant to the Act.
- 2.13 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 7 August 2018. The deadline of submissions was on 4 September 2018.
- 2.14 It is considered that the Road is not reasonably required for public use as:
 - The Road is enclosed within the fenced boundary of 26 Moore Street, Elwood.
 - The Road is not open and is not available for public use.
 - There is no evidence that the Road was ever used for public access purposes.
- 2.15 Council is now in a position to complete the statutory procedures and make a final decision.

3. RECOMMENDATION

That Council:

- 3.1 Resolves that, having followed all the required statutory procedures in accordance with sections 189, 207A and 233 of the *Local Government Act 1989* (Vic) (**Act**) pursuant to its powers under clause 3 of Schedule 10 of the Act, having considered that there were no submissions received in response to the public notice and being of the opinion that the road abutting 26 Moore Street, Elwood being part of the land contained in certificate of title volume 11170 folio 096 (**Road**) is not reasonably required for public use, it discontinues the Road.
- 3.2 Directs that a notice pursuant to the provisions of clause 3(a) of Schedule 10 of the Act is published in the Government Gazette.
- 3.3 Directs that once discontinued, the Road is transferred to the registered proprietors of 26 Moore Street, Elwood for \$8,000 plus GST in accordance with Council's Discontinuance and Sale of Roads Policy where adverse possession for land in the road could be achieved, plus other incidental costs in relation to the discontinuance and sale process.
- 3.4 Directs that the Chief Executive Officer or delegate signs an authorisation allowing Council's solicitors to execute the transfer documents and any other documents required to be signed in connection with the discontinuance and sale of the Road on Council's behalf and its subsequent transfer to the registered proprietors of 26 Moore Street, Elwood.
- 3.5 Directs that any easements, rights or interests required to be created or saved over the Road by any authority be done so and not be affected by the discontinuance and sale.
- 3.6 Directs that the registered proprietors of 26 Moore Street, Elwood be required to consolidate the title to the Road with the title to their property within 12 months of the date of transfer of the discontinued Road.



4. KEY POINTS/ISSUES

- 4.1 The Road is shown as lot 1 on the title plan TP 954330T attached as Attachment 2 (**Title Plan**) to this report.
- 4.2 The Road is shown highlighted in yellow on the locality plan contained in Attachment 3 (**Locality Plan**).
- 4.3 The registered proprietors of 26 Moore Street, Elwood, Elisa Anne de Wit and Mathew Paul John Windebank, (**Owners**) have requested that Council discontinues the Road and sell the Road to them (**Proposal**).
- 4.4 The Owners have agreed to pay the purchase price in accordance with Council's Discontinuance and Sale of Roads Policy where adverse possession for land in the road could be achieved, together with all of Council's costs and disbursements associated with the Proposal.
- 4.5 If the Road is discontinued and sold to the Owners, Council will require the Owners to consolidate the title to the discontinued Road with the title to their property within 12 months of the date of transfer of the Road to them at their expense.
- 4.6 Any easements, rights or interests required to be created or saved over the Road by any authority are to be done so and not to be affected by the discontinuance and sale.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council has notified the community of the Proposal through a public notice in the Port Phillip Leader newspaper on 7 August 2018 inviting submissions in accordance with the statutory procedures described in Section 223 of the Act.
- 5.2 In response to the public notice, no submissions were received.
- 5.3 Relevant Council departments have been notified by way of internal referral. Service authorities have also been consulted to determine requirements for easements.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 There is no evidence that the Road was ever used for public access purposes.
- 6.2 Under clause 3 of Schedule 10 of the Act, Council has the power to discontinue roads within its municipality and sell the land from that road or retain the land for itself.
- 6.3 Council has a policy that enables roads that are no longer required for public access to be discontinued and sold to the adjoining owner(s).

7. FINANCIAL IMPACT

- 7.1 The Owners have agreed to acquire the Road for \$8,000 plus GST and pay all of Council's costs and disbursements associated with Proposal.



8. ENVIRONMENTAL IMPACT

8.1 The Proposal has no detrimental environmental implications.

9. COMMUNITY IMPACT

9.1 Council will facilitate the discontinuance and sale of roads where appropriate consultation has occurred, legislative requirements have been met and it is considered that the road discontinuance and sale is in the best interest of the wider community.

9.2 The Proposal will enable the land in the Road to be re-purposed.

9.3 Proceeds from the sale of the Road will go into Council's consolidated revenue to be used for service delivery elsewhere in the organisation.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The process for discontinuance and sale of roads aligns with the Strategic Direction 6 Our Commitment to You in the Council Plan 2017-27 through supporting:

- transparent governance and an actively engaged community;
- a financially sustainable, high-performing, well-governed organisation that puts the community first.

The Proposal is in accordance with Council's Discontinuance and Sale of Roads Policy.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 If the Proposal is approved, the following events will take place over the next months:

- A notice will be published in the Government Gazette to formally discontinue the Road in November 2018.
- Solicitors will prepare the land transfer so the Owners can attend to settlement either in December 2018 or January 2019.

11.2 COMMUNICATION

11.2.1 The public notification process has provided the community with the opportunity to make submissions. As there were no submissions received, Council is now in a position to complete the statutory procedures and make a final decision.

11.2.2 The Owners will be advised of the final Council decision and the reasons for it within five days of the Council meeting.



ORDINARY MEETING OF COUNCIL 17 OCTOBER 2018

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: 20/13/24

ATTACHMENTS

1. Title Search, Plan of Subdivision and Plan of Survey
2. Title Plan
3. Locality Plan