



Urgent Items Agenda

Council Meeting

7.00pm, Tuesday 3 August 2021

MS Teams

14. Urgent business

Item		Page	Rec. Page	Report Presenter
14.1	Proposed discontinuance of road at Fitzroy North Primary School	2	7	Coordinator Valuations

14.1 Proposed discontinuance of road at Fitzroy North Primary School

Reference	D21/84840
Author	Bill Graham - Coordinator Valuations
Authoriser	Director Corporate, Business and Finance

Purpose

1. For Council to consider whether the road shown as lot 1 on the title plan found at **Attachment One** to this report, being part of the land contained in certificate of title volume 772 folio 273, should be discontinued pursuant to the Local Government Act 1989 and sold to the Minister for Education.

Critical analysis

History and background

2. The Fitzroy North Primary School has attracted \$9 million of construction funding which is complicated because of an underlying right of way that bisects the school site and precludes development over the road reserve.
3. The funding allocation of \$9 million is to modernise the teaching spaces within Block A in order to achieve a fit for purpose teaching building that reflects modern educational principles. Additionally, improved landscaping across the site, drainage and sewer works as well as the creation of interactive outdoor spaces are to be included as part of the scope of works.
4. The Road is shown as the area coloured red on the plan found at **Attachment Two** to this report.
5. The Victorian School Building Authority, acting on behalf of the Minister for Education wrote to Council on 10 February 2021 seeking the acquisition of the Road in order to facilitate a proposal to redevelop Fitzroy North Primary School.
6. The Minister is the registered proprietor of the land contained in certificate of title volume 1555 folio 863 and the Crown land administrator of the land contained in crown folio volume 11742 folio 715 (also known as Crown Allotment 2 Section 42 at North Fitzroy Parish of Jika Jika), being all of the properties which abut the road, shown delineated purple on the Site Plan.
7. The Minister requested that Council discontinue the road and sell it to the Minister for \$1.00 to facilitate the redevelopment of the school.
8. Council has agreed to bear its own costs and disbursements associated with the proposed discontinuance of the Road.

Discontinuance

9. At the Council meeting on 18 May 2021, Council determined to proceed to the first step of the road discontinuance and sale process in recognition of the benefit of the school redevelopment to the community and to seek community feedback as part of that process.
10. Specifically, Council resolved:
 1. *That:*
 - (a) *Council resolves to support the placement of a public notice to consider the discontinuance of the ROW and subsequent vesting of the underlying land to the Minister for a token amount, offsetting the market value of the underlying land in recognition of the benefit the proposed \$9 million upgrade works will provide to*

North Fitzroy North Primary School and community and further, that the ROW has been incorporated into the school grounds for a number of decades; and

(b) this resolution and the value of the land be made public.

Discussion

11. The road is:
 - (a) known to title as a 'road' and is registered in the names of Mark Moss and Henry Penketh Fergie dated 19 April 1875;
 - (b) not currently constructed as a road;
 - (c) constructed over by bitumen play areas, trees and garden beds, fences and flag poles within the Fitzroy North Primary School; and
 - (d) obstructed by fences at both its Austin Way and Fergie Street entrances.
12. It is considered that the road is not reasonably required for public use as the road:
 - (a) is fenced within the school at each end, which abut Austin Way and Fergie Street respectively;
 - (b) is not currently being used as a road or accessed by the general public; and
 - (c) is wholly utilised by the school for recreational purposes only.
13. The road is a 'road' for the purposes of the Act, and Council has statutory power to consider discontinuing the road. If the road is discontinued, the road will vest in Council.
14. On 8 June 2021, Council's Chief Executive Officer, made a decision under her delegated authority to:
 - (a) remove the road from Council's register of public roads pursuant to section 17(4) of the Road Management Act 2004; and
 - (b) commence the statutory procedures and give notice pursuant to section 207A and 223 of the Act of its intention to discontinue and sell the road to the Minister.

Options

15. The options available to Council at this stage are to proceed with the recommendation as printed, or to abandon the proposal. Given the public advertising has been completed, should Council determine to alter the proposal (such as discontinue only part of the road, sell the land to a different party or retain it for its own use, or sell the land for a different amount) the process (together with the public submissions process) will need to be conducted afresh.

Community and stakeholder engagement

Public Notice

16. A public notice that satisfied the requirements of the Act and included the Council resolution of 18 May 2021 and the assessed value of the land was placed in the Age on 21 June 2021.
17. No submissions were received by Council in response to the public notice by the closing date, being 19 July 2021.

Adjoining Owners

18. As the Minister is the registered proprietor and Crown land administrator of all properties which abut the Road, the Minister was not required by Council to seek the consent of any adjoining landowners to the Proposal.

Public Authorities

19. The following statutory authorities have been advised of the Proposal and have been asked to respond to the question of whether they have any existing assets in the Road that should be saved under section 207C of the Act:

- (a) City West Water;
 - (b) Melbourne Water;
 - (c) CitiPower;
 - (d) United Energy;
 - (e) Multinet Gas;
 - (f) Telstra;
 - (g) Optus;
 - (h) APA Gas;
 - (i) AusNet; and
 - (j) Yarra City Council.
20. Melbourne Water, CitiPower, United Energy, Multinet Gas, Optus and Ausnet Services have advised that they have no assets in or above the Road and no objection to the Proposal.
21. On 12 March 2021, City West Water advised that it has sewer assets in the Road. City West Water advised that it did not object to the Proposal, subject to the following conditions:
- (a) a 2 metre wide sewerage easement is created on the title plan over the sewer main located in the Road in favour of city West Water, and the title plan must be referred to City West Water for approval;
 - (b) any proposed fences must be located a minimum distance of 800mm clear of the centreline of the existing sewer mains;
 - (c) any proposed fence lines must be located a minimum of 1 metre from sewer manholes and/or inspection shafts; and
 - (d) any proposal to build over City West Water assets requires City West Water's prior written consent.
22. The title plan for the Road was prepared to include the easement in favour of City West Water as requested by City West Water.
23. On 7 May 2021, City West Water approved the title plan.
24. On 15 March 2021, APA Gas advised that it has no distribution gas mains within the Road, and no objection to the Proposal provided that:
- (a) no property service lines for adjacent allotments are located within the Road; and
 - (b) if any property service lines are located within the Road and require relocation as a result of the Proposal, the Minister liaises with APA Gas to arrange relocation at the Minister's expense.
25. On 21 March 2021, Telstra advised that it has no assets within the near vicinity of the Road, and would not object to the Proposal provided that the landowner, prior to carrying out any works in the vicinity of the Road:
- (a) requests the nominal location of Telstra plant via 'Dial Before You Dig'; and
 - (b) obtains a Telstra-accredited Asset Plant Locator to confirm the actual location of the plant.

Policy analysis

[Alignment to Council Plan](#)

26. Yarra's Council Plan 2017-2021 contains the Municipal Public Health Plan.
27. The Municipal Public Health Plan recognises access to education as a social determinant of health – implicitly acknowledging the need for education facilities in the municipality that are inclusive, accessible and relevant to the needs of local communities.

Climate emergency and sustainability implications

28. It is common for State Government construction projects to include environmentally sustainable design and construction in their projects. As the project is at its early stages, it is not possible to specify the nature of these provisions at this stage.

Community and social implications

29. The social return on investment on Government's \$9 million investment in the school is a substantial commitment and one that will benefit students, families and the school community environment. While it is difficult to undertake a before and after analysis (perhaps reflected as an economic analysis), and to determine whether Government's investment has yielded benefits and outcomes that equate or exceed \$9 million, academic experts in economic early childhood policy evaluation suggest that the community benefit to cost ratio may be as high as 12:1.

Economic development implications

30. The redevelopment of the school will be an economic generator for the construction industry in Victoria more generally, but it is not expected that the impact on the City of Yarra will be significant (other than the fact that Yarra's business will be able to offer their services to the project).
31. Construction projects managed by the Victorian School Building Authority are let by competitive tender. Tenderers are required to specify whether or not they are located in Victoria, with this information used to identify opportunities to undertake social procurement, in line with Victoria's Social Procurement Framework.
32. With a budget of \$9 Million, this project will qualify as a 'Local Jobs First standard project' under the State Government's Local Jobs First Policy, meaning that Victorian businesses and workers are supported by ensuring that small and medium size enterprises are given a full and fair opportunity to compete for contracts, helping to create job opportunities, including for apprentices, trainees and cadets.

Human rights and gender equality implications

33. The redevelopment of the school will enable the provision of more contemporary facilities and will improve the ability of the school to cater for the needs of students with a disability and students with special learning needs.

Operational analysis

Financial and resource impacts

34. The Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land (dated June 2009), provide that a Council should not sell for less than market value assessed by a valuer engaged by Council, unless there are circumstances to explain the decision to accept a price less than market value.
35. In its May resolution, Council determined to consider the transfer of the land for "*a token amount, offsetting the market value of the underlying land*". This decision was made in recognition of the history and location of the land, and the fact that the Minister is the only realistic buyer. In circumstances like these, the terms of any agreed ownership transfer are determined by negotiation and do not necessarily reflect the assessed market value.
36. The notional value of the land has been determined at \$235,000, and the token amount recommended in this report is one dollar.
37. In addition, Council has agreed to bear its own costs and disbursements associated with the proposal.

Legal Implications

38. Council's solicitors have been engaged to provide guidance and oversee the discontinuance and sale process. The nature of road discontinuance and sale is a complex area of law, particularly if the land is to be transferred to another level of government.

39. The specific wording of public notices and the recommendation in this report has been guided by solicitor's advice.

Conclusion

40. Council must now determine whether the Road is reasonably required for public use in order to decide whether the Road should be discontinued and sold pursuant to clause 3 of schedule 10 of the Act.

RECOMMENDATION

1. That Council, acting under clause 3 of schedule 10 of the Local Government Act 1989 (Act):
 - (a) resolves, having followed all the required statutory procedures pursuant to sections 207A and 233 of the Act pursuant to its power under clause 3 of Schedule 10 of the Act, and being of the opinion that the road at Fitzroy North Primary School, Fitzroy North, being part of the land contained in certificate of title volume 772 folio 273 (shown marked lot 1 on the title plan attached as **Attachment One** to this report (Road)) is not reasonably required for public use for the reasons set out in this report, to discontinue the Road;
 - (b) directs that a notice pursuant to the provisions of clause 3(a) of Schedule 10 of the Act is to be published in the Victoria Government Gazette;
 - (c) directs that, once discontinued, the Road be transferred to the Minister administering the Education and Training Reform Act 2006 (Vic) (Minister) for \$1.00;
 - (d) directs that the CEO sign any transfer or transfers of the Road and any other documents required to be signed in connection with the discontinuance of the Road and their subsequent transfer to the Minister;
 - (e) 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 of the Road; and
 - (f) directs that the Minister be required to consolidate the title to the discontinued Road with the land contained in certificate of title volume 1555 folio 863, by no later than 6 months after the date of transfer of the discontinued Road.

Attachments

- 1 [↓](#) Title Plan of road to be discontinued
- 2 [↓](#) Location Plan

Attachment 1 - Title Plan of road to be discontinued

TITLE PLAN		EDITION I				
LOCATION OF LAND PARISH : JIKA JIKA AT NORTH FITZROY TOWNSHIP : _____ SECTION : 42 CROWN ALLOTMENT: 3 (PART) CROWN PORTION : _____ LAST PLAN REFERENCE : ROAD R-1, TP.923859V TITLE REFERENCE : VOL.772 FOL.273 (PART)			NOTATIONS DEPTH LIMITATION DOES NOT APPLY CONNECTION SHOWN TO SCOTCHMER STREET IS NOT TO SCALE			
MGA.2020 Co-ordinates (of approx. E 322 475 ZONE: 55 (of approx. centre of land in plan) N 5 816 135 GDA 2020			THIS PLAN HAS BEEN PREPARED FOR LAND USE VICTORIA FOR TITLE DIAGRAM PURPOSES Checked by: Date: Assistant Registrar of Titles			
EASEMENT INFORMATION						
LEGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)						
	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of		
E-1	AS PROVIDED FOR IN SEC.207C LGA 1989	2.00	SEC.207C LGA 1989	CITY WEST WATER		

SCOTCHMER STREET

APPROX. TRUE NORTH
ROAD
STREET
FERGIE STREET

ORIGINAL SHEET SIZE: A3		CERTIFICATION BY SURVEYOR	SHEET 1 OF 1
SCALE 1:250	2.5 0 2.5 5 7.5 10 LENGTHS ARE IN METRES	LICENSED SURVEYOR (PRINT) . . . DEAN PAUL EDDY . . . SIGNATURE . . . <i>Dean Eddy</i> . . . DATE 20/04/2021	
REF: 8539-TP VERSION: 2			
LAWLOR AND LOY VIC. PTY. LTD. LAND SURVEYORS • PLANNING CONSULTANTS EMAIL: admin@lawlorandloy.com.au PHONE: (03)9435 2422 3/18 SHERBOURNE ROAD BRIAR HILL 3088 (WALLAN OFFICE BY APPOINTMENT) www.lawlorandloy.com.au			

Attachment 2 - Location Plan

Site Location

Fitzroy North Primary School road discontinuance

