

Report of the Committee formed to consider submissions received concerning a proposed road discontinuance and sale at the rear of properties at the rear of 334-340 White Road and 350-362 White Road Wonthaggi.

Committee composition:

Bunurong Ward councillors
Councillors Julian Brown, Les Larke and Brett Tessari

Introduction:

Section 206 of the Local Government Act 1989 gives Council powers over roads in its Municipal District, including powers set out in Schedule 10 of the Act.

Schedule 10 (3) provides that a Council may discontinue a road, or part of a road, by notice published in the Government Gazette.

Following discontinuance the land from the road, unless it is already owned by Council or is Crown land, will vest in Council free from all encumbrances. Council may then sell the land from road or part of it or retain it.

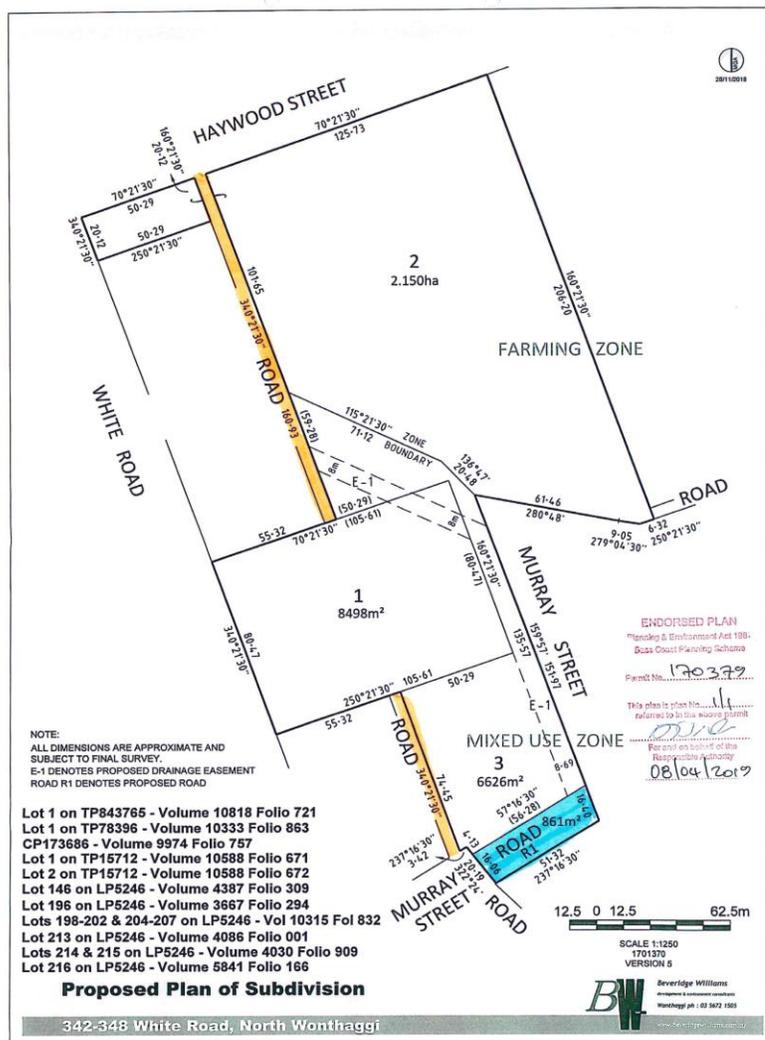
Section 223 of the Act requires that Council gives public notice of an intention to discontinue a road and to receive submission within 28 days of the publication of the notice Council must then hear and consider submissions before making a final decision – the statutory procedures.

At its meeting on 21 August 2019, Council resolved to commence the statutory procedures for road discontinuance and the sale of the land from the roads. Following the Council resolution, a notice was published on 24 September 2019, inviting submissions from interested persons. Three submissions were received. All councillors received a copy of the submissions.

Council also resolved that a committee comprised of the three ward councillors would hear and consider the submissions.

This matter has its origins in planning permit discussions about a three-lot subdivision including the land occupied by the Toyota showroom - (Lot 1) in Wonthaggi. At the time, it was proposed that Council could discontinue the road coloured orange and transfer the land in the road to the owner of the land in the subdivision in exchange for the land coloured blue as shown on the plan below (Proposed land swap).

The proposed land swap enables Lot 2 in the plan of subdivision to have access to Murray Street rather than the unformed Haywood Street, extends Murray Street for the benefit of future development to the north and east and compensates the owner of the land in the subdivision through a land swap.



Background:

The road that is proposed to be discontinued is:

- not constructed
- not recorded on Council’s Register of Public Roads
- not a declared road
- not a declared public highway
- not a public highway at common law

The original subdivision (LP 5246) which created the allotments, roads and laneways in the area was approved in 1911.

Part of the laneway in LP 5246, at the rear of properties having a frontage to White Road, was discontinued and sold in 2004 to become part of the Toyota Showroom site.

Prior to commencing the statutory procedures, Council officers wrote to the all owners of property adjoining the road subject to proposed discontinuance and sale. The correspondence dated 18 March 2019, asked for feedback about the proposal.

The only response was from the owner of 338 White Road expressing an interest in acquiring part of the road. In the follow up to this feedback it was agreed that the owner of 338 White Road would purchase the road to the rear of 338 White Road extending out to Murray Street and that the funds received from the sale would transfer to the owner of the land in the subdivision. This agreement was articulated in the report to Council considered on 21 August 2019.

At the time of this agreement it was not known that the owner of the land in the subdivision also owned 334 White Road as the registered proprietor is a company rather than an individual.

Submissions:

Submissions were received from:

Submitter A – the owner of the land in the subdivision and also the owner of 334 and 340 White Road.

Submitter B – the owner of 338 White Road

Submitter C – the owner of 350 White Road



Hearing of submissions:

Submitters were invited to attend a hearing on 13 November 2019 at the Council Chamber, Bass Coast Shire Civic Centre, 76 McBride Avenue Wonthaggi at 9.00 am. All submitters were present.

The submitters generally spoke in support of their submissions. The submissions are summarised below.

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| Submitter A | <p>The submission supported the proposed road discontinuance and sale and urged Council to effect a land swap as originally proposed. The submitter stated that he has acted in good faith by progressing the plan of subdivision which in part creates the Murray Street extension that is considered to be a desirable community outcome. The main focus of the submission was to argue that the road at the rear of 334 and 340 White Road and at least half of the road at the rear of 338 White Road be transferred to himself. This would be necessary to support plans he has for an integrated development of the properties together with the land shown as Lot 3 on the Plan of Subdivision. Submitter A rejects the idea that a carriageway easement be created in favour of the owner of 338 White Road.</p> <p>Submitter A claimed that there was confusion about what was agreed in relation to the proposed purchase by the owner of 338 White Road. Had he understood what was proposed he would never agreed to support a proposal that would have an adverse impact on his development plans.</p> |
| Submitter B | <p>The submission requests the purchase of the road to the rear of 338 White Road extending out to Murray Street. The submitter plans an unspecified commercial development and believes rear egress will be necessary to avoid potential traffic conflict on the main road (White Road). The submitter stated that access was the primary consideration and not a land grab.</p> <p>In subsequent correspondence the submitter requests a purchase of half the width of the road across the rear of 338 White Road and extending out to Murray Street. If this is not possible the submitter requests that the road not be discontinued in this section. The submitter rejects the possibility of a carriageway easement.</p> |
| Submitter C | <p>The submission requests a purchase of land in the road to the rear of 350 White Road. At the hearing information was requested about drainage affecting some of this land.</p> <p>The drainage easement shown on the plan of subdivision will be extended to cover the open drain that runs along part of the road proposed to be discontinued.</p> |

Consideration of submissions:

With regard to the request to purchase land at the rear of 350 White Road by submitter C it is considered fair and equitable to allow the request. It is not practical to sell half the width of the road, as this would result in a boundary through the middle of an open drain, which has the potential to impede future development and maintenance of the drain. It is reasonable to allow the purchase of the full width of the laneway to the south having a length of approximately 25 metres. Funds derived from the sale should transfer to the owner of land in the plan of subdivision to be consistent with the original land swap proposal.

The Committee accepts that Submitter A was confused about what was proposed by the owner of 338 White Road that was reported to Council at the August 2019 meeting and would not have agreed if he understood the full extent of that proposal.

The issue to be decided is - what is to happen to the part of the road that is proposed to be discontinued at the rear of 338 and 334 White Road?

Neither party is interested in a transfer of land to the owner of 334 White Road and the land in the subdivision with a carriageway easement created in favour of the owner of 338 White Road.

There are four options:

Option 1 – (preferred) Discontinue the road and transfer to the owner of the land in the subdivision. The original proposal.

It is considered that the road is not required for general public use. Due to land ownership arrangements in this locality, it would only be beneficial to one property (338 White Road).

If the land in the road was allowed to be used for a more beneficial purpose, it allows flexibility in the design and construction of an integrated development such as that proposed by the owner 334 and 340 White Road and Lot 3 in the plan of subdivision.

Council would be acting in good faith with the original proposal by completing an arrangement for the acquisition of the extension of Murray Street which has broad community benefits through the orderly and proper planning for future residential development in this part of Wonthaggi.

Typically, where a road at the rear of properties is proposed for discontinuance, the adjoining owners on either side are offered the opportunity to purchase the land in the road. In these circumstances, the owner of 338 White Road would only be granted the opportunity to purchase land at the rear and not the land that extends to Murray Street.

Option 2 – Sell half the width of the road adjoin the rear of 338 and 334 White Road to the owner of 338 White Road. (Proposed by the owner of 338 White Road)

The rear access to Murray Street is seen to be beneficial to a future commercial development of 338 White Road. The development is yet to be specified and the timing is unclear. The road

would have to be constructed to Council standards by the owner of 338 White Road. Council would then be responsible for maintaining the road.

A width of three metres or so is considered to be deficient for the purpose.

The road would continue to separate land in contiguous ownership (No 334 and Lot 3 in the plan of subdivision).

Option 3 – Not discontinue the road.

While this does not change the current status it does not provide future clarity. The first developer would have to pay for construction of the road but only for that part required. The remainder of the road would lie idle until such time as other land was developed.

Option 4 – Discontinue the road and retain the land

Council does not need to own and maintain a long narrow strip of land for which it has no strategic purpose.

Conclusion:

The original proposal is for a land swap which enables:

- Council to extend Murray Street to provide broad community benefits through the orderly planning and residential development of land to the north and east that will require appropriate access to White Road, and
- The owner of 334 and 340 White Road as well as Lot 3 in the plan of subdivision to progress with plans for an integrated commercial development.

The original proposal is disadvantageous to the owner of 338 White Road as there is an expectation that the road will provide rear egress for a future development of 338 White Road.

However the expectation that there might be future rear access through to Murray Street could reasonably be considered to be doubtful due to the following:

- For over a hundred years the road has appeared on an approved plan but has never been used as a road
- These narrow roads typically appear on old plans, generally as night cart lanes, but are not required for contemporary development
- Part of the road through the Toyota showroom site has already been discontinued and sold
- There would be doubt that Council would seek to create and maintain a public road to the benefit of only one land owner.

The committee having considered the submissions made and weighed the merits of the conflicting views, considers that the road should be discontinued and transferred to the owner of the land in the subdivision apart from land at the rear of 350 White Road.

Note:

The three lot subdivision of the land owned by submitter A has been approved by Land Registry. Council is the registered proprietor of R1 in the subdivision and a certificate of title for will be issued to Council.

Recommendation:

That Council:

- 1. Resolves that having followed all the required statutory procedures pursuant to sections 207A and 223 of the Local Government Act 1989 (Act) pursuant to its powers under clause 3 of schedule 10 of the Act and having considered submissions received in response to the public notice, it discontinues the road.**
- 2. Is of the opinion that the road is not reasonably required for public access as:**
 - 2.1 The road is not available for public use;**
 - 2.2 There is no evidence that the road has been used for public access purposes;**
 - 2.3 The section of the road at the rear 334 and 338, if constructed would be to the benefit of only one person, and**
 - 2.4 It is fair and equitable that the owner of 350 White Road be able to purchase part of the land in the road abutting the rear boundary.**
- 3. Directs that notice pursuant to the provisions of Clause 3 of Schedule 10 of the Act is published in the Government Gazette.**
- 4. Directs that once discontinued, the land in the road is transferred:**
 - 4.1 part to the registered proprietor of 340 White Road Wonthaggi and**
 - 4.2 part to the registered proprietor of 350 White Road, Wonthaggi**
- 5. Directs that funds from the sale of the land to the registered proprietor of 350 White Road Wonthaggi be transferred to the registered proprietor of 340 White Road Wonthaggi.**
- 6. Directs that the common seal of Council is affixed to any transfer of land and any other documents required to be signed in connection with the road and subsequent transfers.**
- 7. 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 road discontinuance and sale.**
- 8. Directs that the adjoining owners be required to consolidate their titles within 12 months of the date of transfer of the discontinued road.**

Road Discontinuance and Sale Policy 2020

Preamble

From time to time Council receives a request, or may initiate a proposal itself, to discontinue a road that may not be required for general public use in order for the land in the road to be used for a better purpose.

Council has powers to discontinue a road under the Local Government Act 1989 and may sell the land in the road.

Policy objective

The aim of this policy is to provide a decision making framework to ensure that there is consistency, transparency and fairness in the approach to road discontinuance and the sale of land from roads

Policy statement

- **Consistency**

Council must determine that a road to be discontinued is not required for general public use which may require the input of stakeholders. The sale of land from a discontinued road will be at market value as determined by an independent valuer appointed by Council. A purchaser will be required to pay the costs, or a share of the costs if there is more than one buyer, that are associated with the road discontinuance and sale of the land.

- **Transparency**

Council will engage with the community about any road discontinuance proposal as required under the Local Government Act 1989 but will also notify all property owners that may be affected by the proposal.

- **Fairness**

Land from a discontinued road would normally be sold to the owner of an adjoining property. All owners of adjoining properties will be given an equal opportunity to purchase land adjoining their property having regard to a logical and equitable outcome.

Additional documents

- Guidelines for Road Discontinuance and Sale as amended from time to time.

Reference to other documents

- Local Government Act 1989
- Road Management Act 2004
- Bass Coast Shire Council Property Strategy 2016
- Bass Coast Shire Council Asset Management Policy Infrastructure Assets 2017-2021
- Bass Coast Shire Council Road Asset Management Plan 2019-2023

Review process

- Policy to be reviewed in 4 years.
- Policy will not be revoked without being replaced by other policies unless the need for a policy is no longer required.

Accountability process

The following officers are responsible for the adherence and application of the policy:

- Manager Governance and Property
- Coordinator Property and Facilities
- Property Officer

Approval

| Version number | Approved/adopted by | Date |
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| Adopted by Council at its meeting held on | Date/...../..... |
| Signed by the Mayor Brett Tessari..... | |
| | Date/...../..... |