



**14.4** PROPOSED DISCONTINUANCE AND SALE OF ROAD  
ABUTTING 285-287 INKERMAN STREET AND 3-7 NELSON  
STREET, BALACLAVA

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

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

**1. PURPOSE**

- 1.1 To consider whether the road abutting 3-5 Nelson Street, Balaclava (**3-5 Nelson Street**), being the whole land of the land contained in Certificate of Title Volume 2087 Folio 350 and Conveyance Book 107 No. 503 and shown as lot '1' on the title plan attached as Attachment 1 to this report (**Road**), should be discontinued pursuant to the *Local Government Act 1989* (Vic) (**Act**) and sold to the owner of 3-5 Nelson Street (**Owner**).

**2. EXECUTIVE SUMMARY**

- 2.1 The Road is approximately 126 square metres in area and abuts 3-5 Nelson Street.
- 2.2 The Road:
- 2.2.1 is constructed of bluestone, gravel and concrete;
  - 2.2.2 is partially obstructed by fencing and vegetation and a timber shed located at 287 Inkerman Street, Balaclava (**287 Inkerman Street**); and
  - 2.2.3 provides access to 287 Inkerman Street.
- 2.3 The Owner has requested that Council discontinues the Road and sell the Road to them (**Proposal**).
- 2.4 At its meeting on 6 November 2019, Council resolved to:
- 2.4.1 remove the Road from Council's Register of Public Roads; and
  - 2.4.2 commence the statutory procedures and give notice pursuant to sections 207A and 223 of the Act of its intention to discontinue and sell the Road to the Owner.
- 2.5 Council is now in a position to consider whether to discontinue and sell the Road to the Owner.



### 3. RECOMMENDATION

That Council, having considered that there were no submissions in response to the public notice regarding Council's proposal to discontinue the road shown marked lot '1' on the title plan attached as Attachment 1 to this report (**Road**), being the whole of the land contained in Certificate of Title Volume 2087 Folio 350 and Conveyance Book 107 No. 503:

- 3.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use for the reasons set out in this report;
- 3.2 resolves to sell the discontinued Road, for the market value of \$529,200 plus GST to the owner of 3-5 Nelson Street, Balaclava (**3-5 Nelson Street**);
- 3.3 notes that the proceeds from the sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio;
- 3.4 notes that the owner of 3-5 Nelson Street has agreed to purchase the bluestone pitchers within the Road at the market value of \$216 per square metre;
- 3.5 directs that a notice pursuant to clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) is published in the *Victoria Government Gazette*;
- 3.6 directs that the Chief Executive Officer or delegate signs an authorisation allowing Council's solicitors to execute transfer documents and any other documents required to be signed on Council's behalf in connection with the transfer of the discontinued Road to the owner of 3-5 Nelson Street; and
- 3.7 directs that the owner of 3-5 Nelson Street be required to consolidate the title to the Road with the title to the adjoining property of the owner within 12 months of the date of the transfer of the discontinued Road.

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 The Road, shown delineated red on the locality plan attached as Attachment 2 (**Locality Plan**) abuts 3-5 Nelson Street, as shown on the Locality Plan.
- 4.2 The Road also abuts the following properties:
  - 4.2.1 285 Inkerman Street, Balaclava (**285 Inkerman Street**);
  - 4.2.2 287 Inkerman Street; and
  - 4.2.3 7 Nelson Street, Balaclava,which are owned by the Owner, and shown delineated green on the Locality Plan (together, the **Adjoining Properties**).
- 4.3 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value for the transfer of the discontinued Road to the Owner.



## Road

- 4.4 The Road is comprised of the whole of the land contained in:
- 4.4.1 Certificate of Title Volume 2087 Folio 350 (**Torrens Parcel**); and
  - 4.4.2 Conveyance Book 107 No. 503 (**General Law Parcel**).
- 4.5 The Torrens Parcel is encumbered by a carriageway easement.
- 4.6 The General Law Parcel is a 'way' on the plan in Application No. 36142, a copy of which is attached as Attachment 3.
- 4.7 The Road is a 'road' for the purposes of the Act as a carriageway easement and a 'way' are 'rights of way' for the purposes of the Act. Council has statutory power to consider discontinuing the Road.
- 4.8 It is considered that the Road is not reasonably required for public use as the Road:
- 4.8.1 only provides access to the Owner's properties, which have road abutments to Inkerman Street, Nelson Street, and a laneway to the west of 285 Inkerman Street, and
  - 4.8.2 does not provide public access as a thoroughfare to any other public road.
- 4.9 If the Road is discontinued, the Road will vest in Council.

## Adjoining Properties

- 4.10 As the Owner owns all of the Adjoining Properties, it was not required to seek the written consent of any adjoining owner.

## Alternative Uses

- 4.11 Each proposed road discontinuance is evaluated based on Council's Policy taking into account whether or not it is reasonably required for public use, and not what the future use of the discontinued road would be for the prospective purchaser. However, as enquiries into the planning permit have been raised previously, certain conditions of the planning permit have been considered in the assessment.
- 4.12 The planning permit approval for the surrounding land (which conditionally includes the Road) would result in a sizable Public Open Space (**POS**) contribution being made to Council.
- 4.13 In the Planning team's view, the Road is not considered ideal for POS or other community use for a number of reasons such as the Road's limited width, the Road being surrounded by rear fences, the Road being on a dead end, and the Road's poor sense of safety and location. The team has added that this has been particularly compared to the prospect of Council using the POS contribution associated with the approved development to cultivate an alternative open space in the area, preferred location of which Council would have more control over.



### Consolidation

- 4.14 If the Road is discontinued and sold to the Owner, Council will require the Owner to consolidate the title to the discontinued Road with the title to the adjoining property of the Owner within 12 months of the date of the transfer of the discontinued Road to the Owner, at the Owner's expense.

### Site Inspection

- 4.15 A site inspection of the Road was conducted by Charter Keck Cramer on 8 February 2019. The site inspection report notes that:
- a) the Road is constructed of bluestone, gravel and concrete;
  - b) the Road is partly obstructed by fencing and vegetation;
  - c) the section of the Road running north-south is only accessible via a locked roller door which provides access to 287 Inkerman;
  - d) a timber shed located at 287 Inkerman partially encroaches onto the Road;
  - e) the Road only provides access to the Owner's properties;
  - f) each of the Owner's properties have road abuttal to Inkerman Street, Nelson Street, and a laneway to the west of 285 Inkerman; and
  - g) the Road is not required for public use.
- 4.16 A copy of the site inspection report is attached as Attachment 4 to this report.

## 5. CONSULTATION AND STAKEHOLDERS

### Public Authorities

- 5.1 The following statutory authorities have been advised of the proposed discontinuance of the Road and have been asked to respond to the question of whether they have any existing assets in the Road, which should be saved under section 207C of the Act:
- 5.1.1 Council;
  - 5.1.2 South East Water;
  - 5.1.3 Melbourne Water;
  - 5.1.4 CitiPower;
  - 5.1.5 Multinet;
  - 5.1.6 Telstra; and
  - 5.1.7 Optus.
- 5.2 Council's Assets team advised that Council has no assets in or above the Road and that it has no objection to the Proposal, provided that the Owner, in accordance with Council's Discontinuance and Sale of Roads Policy (**Policy**), either:



5.2.1 purchases the bluestone pitchers within the Road at market value, being \$216 per square metre; or

5.2.2 reimburses Council's costs incurred in removing the bluestone pitchers from the Road.

The Owner has agreed to purchase the bluestone pitchers within the Road at market value, being \$216 per square metre.

5.3 Relevant Council departments have been notified by way of internal referral.

5.4 Multinet advised that it has no assets in or above the Road and no objection to the proposed discontinuance of the Road.

5.5 Optus advised it has no assets in or above the Road.

5.6 Melbourne Water and CitiPower advised that they have no objection to the proposed discontinuance of the Road.

5.7 In a letter dated 19 November 2018, Telstra advised that it has no assets in the near vicinity of the Road, and would not object to the discontinuance of the Road provided that the Owner calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road.

5.8 In a letter dated 20 February 2019, South East Water objected to the Proposal on the basis that it has assets located within the Road.

5.9 Following negotiation with the Owner, South East Water advised in writing on 8 May 2019 that it would no longer object to the Proposal on the following basis:

5.9.1 the Owner abandons the existing 100mm sewer and associated infrastructure within the Road;

5.9.2 a new sewer vent stack is installed (at the Owner's cost) at the corner of Inkerman Street and Nelson Street, Balaclava;

5.9.3 Council's written approval to relocate the sewer stack is provided to South East Water prior to any works; and

5.9.4 an agreement is entered into between the Owner and South East Water in respect of the proposed works.

Council's Assets team has since provided written approval to the relocation of the sewer stack.

#### **Public Authorities**

5.10 Council has notified the community of the Proposal through a public notice in the Port Phillip Leader newspaper on 19 November 2019, inviting submissions in accordance with section 223 of the Act, with a deadline for submissions of 17 December 2019.

5.11 No submissions were received by Council in response to the public notice.



## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 Under clause 3 of Schedule 10 of the Act, a council has the power to discontinue roads located within its municipality and sell the land from that road or retain the land for itself.
- 6.2 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), subject to Council approval and statutory requirements.
- 6.3 Council's Policy also ensures that roads reasonably required for public access remain open to the public.

## **7. FINANCIAL IMPACT**

- 7.1 The Owner has agreed to acquire the Road for its market value (plus GST). If Council proposes to transfer the Road, it will need to obtain a valuation of the Road in accordance with the Act. This is in accordance with Council's Policy.
- 7.2 The market valuation obtained by Council assessed the Road as \$4,200 per square metre plus GST, multiplied by 126 square metres, equating to an assessed market value of \$529,200 plus GST, which the Owner has accepted.
- 7.3 Under section 189 of the Act, Council must not sell the land in the Road at less than market value.
- 7.4 A recent market valuation was sought resulting to a figure that is slightly less than the previously assessed market valuation. This validates the previously assessed market valuation to be accurate and reasonable for Council to consider.
- 7.5 Accordingly, Council is not precluded from selling the land in the Road at its original valuation of \$529,200 plus GST.
- 7.6 The Owner has agreed to purchase the bluestone pitchers located within the Road at the market value of \$216 per square metre.
- 7.7 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value for the transfer of the discontinued Road to the Owner.

## **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 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 If Council resolves to discontinue and sell the Road, the proceeds from the sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio.



## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The proposed discontinuance of the Road aligns with the Strategic Direction 6 Our Commitment to You in the Council Plan 2017-27 through supporting:

10.1.1 transparent governance and an actively engaged community; and

10.1.2 a financially sustainable, high performing, well-governed organisation that puts the community first.

10.2 The Proposal is in accordance with Council's Policy.

## 11. IMPLEMENTATION STRATEGY

### 11.1 TIMELINE

If the Proposal is approved:

11.1.1 a notice will be published in the *Victoria Government Gazette* to formally discontinue the Road; and

11.1.2 a transfer of the discontinued Road pursuant to section 207D of the Act will be prepared by Council's solicitors.

### 11.2 COMMUNICATION

11.2.1 The public notification process has provided the community with the opportunity to make submissions in respect of the Proposal. Having considered that no submissions were received, Council may now determine whether to discontinue and sell the Road.

11.2.2 The Owner will be advised of the final Council decision and the reasons for it within 5 days of the Council meeting.

## 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:** 20/13/35

**ATTACHMENTS**

1. Title Plan
2. Locality Plan
3. Application No. 36142
4. Site Inspection Report