



14.2 **PROPOSED DISCONTINUANCE AND SALE OF ROAD
ABUTTING 119-125 MARKET STREET, SOUTH MELBOURNE**

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

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

1. PURPOSE

1.1 This report seeks Council's approval to:

- Consider removing the road R3199 abutting 119-125 Market Street, South Melbourne, being the general law land remaining in Crown Grant 3490/1852, shown as lot 1 on Title Plan TP 965714M, attached as Attachment 1 to this report (**Road**) from Council's Register of Public Roads; and
- Commence the statutory procedures pursuant to the *Local Government Act 1989* (Vic) (**Act**) to consider discontinuing the road. If the Road is subsequently discontinued, the Road is proposed to be sold to the adjoining owner for market value.

2. EXECUTIVE SUMMARY

- 2.1 The Road has an area of approximately 92 square metres and abuts 119-125 Market Street, South Melbourne.
- 2.2 The Road being R3199 is listed on Council's Register of Public Roads.
- 2.3 The owner of 119-125 Market Street, South Melbourne, has requested that Council discontinues the Road and sells the Road to them.
- 2.4 Council is required to consider whether or not to:
- remove the Road from Council's Register of Public Roads; and
 - commence the statutory procedures to discontinue the Road.
- 2.5 If the Road is subsequently discontinued, the Road is proposed to be sold to the adjoining owner for market value of \$736,000 plus GST. In addition, Council's costs incurred in removing the bluestone pitchers from the Road if Council believes they still have value, will be borne by the owner of 119-125 Market Street, South Melbourne.
- 2.6 Officers propose that Council considers removing the Road from Council's Register of Public Roads on the basis that the Road is no longer reasonably required for general public use for the reasons sets out in the report, and that Council considers commencing the statutory procedures to discontinue the Road.



3. RECOMMENDATION

That Council:

- 3.1 Acting under section 17(4) of the Road Management Act 2004 (Vic), resolves that the Road being R3199 abutting 119-125 Market Street, South Melbourne be removed from Council's Register of Public Roads on the basis that the Road is no longer reasonably required for general public use for the reasons set out in the report.
- 3.2 Acting in accordance with clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) (**Act**):
 - 3.2.1 resolves to commence the statutory procedures to discontinue the Road;
 - 3.2.2 directs that under sections 207A and 223 of the Act public notice of the proposed discontinuance of the Road be given in the Port Phillip Leader newspaper;
 - 3.2.3 resolves that the public notice required to be given under sections 207A and 223 of the Act should state that if the Road is discontinued, Council proposes to sell the Road to the adjoining owner for market value of \$736,000 plus GST;
 - 3.2.4 notes that the adjoining owner has agreed to reimbursing Council's costs incurred in removing the bluestone pitchers from the Road if Council believes they still have value;
 - 3.2.5 notes that proceeds from the proposed sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio;
 - 3.2.6 authorises the Chief Executive Officer or 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 and
 - 3.2.7 resolves to hear and consider any submissions received pursuant to section 223 of the Act at a Council Meeting to be determined at a later date.

4. KEY POINTS/ISSUES

Background

- 4.1 The Road, shown highlighted red on the locality plan attached as Attachment 2 (**Locality Plan**) abuts 119 Market-125 Street, South Melbourne (**119-125 Market Street**), shown delineated blue on the Locality Plan.
- 4.2 The owner of 119-125 Market Street, South Melbourne (**Owner**) has requested that Council discontinues the Road and sells the Road to them (**Proposal**).
- 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 them.

Road

- 4.4 The Road is shown as a 'right of way' on the title plan attached as Attachment 3. The Road is therefore a 'road' for the purposes of the Act. Council has statutory power to consider discontinuing the Road.



4.5 The Road is listed on Council's Register of Public Roads. It is considered that the Road is no longer reasonably required for general public use as the Road is not used by the general public.

4.6 If the Road is discontinued, the Road will vest in Council.

Adjoining Owners

4.7 The Owner owns the following properties which abut the Road:

- 3 Northumberland Street, South Melbourne (**3 Northumberland Street**);
- 80-82 Cecil Street, South Melbourne (**80-82 Cecil Street**), shown delineated orange on the Locality Plan;
- 84-92 Cecil Street, South Melbourne; and
- The former road at 80-94 Cecil Street, South Melbourne.

4.8 The Road also abuts the property at 78 Cecil Street, South Melbourne (**78 Cecil Street**), shown delineated green on the Locality Plan.

4.9 Council Officers required the Owner to seek the consent of the owners of 78 Cecil Street (**Adjoining Owners**), to the Proposal.

4.10 On 4 October 2018, the Adjoining Owners objected in writing to the Proposal on the basis that the Proposal would:

- restrict access to 78 Cecil Street;
- affect the architecture of future development of 78 Cecil Street; and
- devalue 78 Cecil Street by reducing its frontages from three to two.

4.11 On 10 October 2018, the Owner pending its ongoing negotiations with the Adjoining Owners in respect of the Proposal, made a revised proposal to Council to discontinue only that part of the Road which does not abut 78 Cecil Street (**Revised Proposal**).

4.12 On 20 November 2018, the architects acting on behalf of the Adjoining Owners objected in writing to the Revised Proposal, on the basis that:

- the Road is used by vehicles making deliveries to the business at 78 Cecil Street; and
- any vehicles exiting onto Market Street from a proposed development at 78 Cecil Street would first reverse into the Road.

4.13 On 3 December 2018, the Owners contended that the Adjoining Owners' objection should not restrict Council from proceeding with the Revised Proposal, on the basis that:

- the Adjoining Owners' private right of carriageway has been extinguished by the existence of a public right of way over the Road;
- the majority of deliveries to 78 Cecil Street are made from an entrance at Market Street;
- any delivery vehicles entering the laneway have no reason to proceed past the southern boundary of 78 Cecil Street, and enter the Road; and
- the Adjoining Owners' development is theoretical and lacks detail.



- 4.14 On 2 January 2019, Council's Traffic Engineer advised the following:
- the Road does not provide vehicular access to other abutting properties;
 - the proposed Road discontinuance would maintain pedestrian access to 78 Cecil Street;
 - there are no current planning applications which are affected by the proposed discontinuance; and
 - any future development of abutting properties would need to consider latest site conditions in its design.
- 4.15 Consequently, the Owner entered into a contract with the Adjoining Owners for the purchase of 78 Cecil Street under a contract of sale dated 27 March 2019.
- 4.16 The Adjoining Owners agreed to withdraw their objection to the Proposal, under a deed of settlement between the Adjoining Owners and the Owner dated 30 July 2019.

Consolidation

- 4.17 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 transfer of the Road to the Owner, at the Owner's expense.

Site Inspection

- 4.18 A site inspection of the Road dated 24 April 2019 was provided by Millar Merrigan Land Development Consultants. The site inspection report notes that:
- the Road is constructed of bluestone pitches;
 - the only evidence of the Road being used is that it provides access to car parking at 119-125 Market Street, which is owned by the Owner;
 - the properties at 3 Northumberland Street and 80-82 Cecil Street are both owned by the same Owner, each has roller doors which abut the Road and appear to have been unused for some time;
 - while the property at 78 Cecil Street has a door and window which abuts the Road, it is understood that the Owner has purchased this property and on this understanding the door and window would not have been considered as a factor in the report;
 - all adjacent properties have direct access to the abutting public roads Market Street, Cecil Street, and Northumberland Street; and
 - the Road is not required for public access.

A copy of the site inspection report is attached as Attachment 4 to this report.

Public Authorities

- 4.19 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:
- Council;



- South East Water;
 - Melbourne Water;
 - CitiPower;
 - Multinet Gas;
 - Telstra; and
 - Optus.
- 4.20 Council Asset Management team has advised it has no objection to the Proposal, provided that the Owner, in accordance with the Council's Discontinuance and Sale of Roads Policy (**Policy**), either:
- 4.20.1 purchases the bluestone pitchers within the Road at market value; currently at \$216 per square metre; or
 - 4.20.2 reimburses Council's costs incurred in removing the bluestone pitchers from the Road.
- The Owner has agreed to reimbursing Council's costs incurred in removing the bluestone pitchers from the Road if Council believes they still have value.
- 4.21 Multinet Gas has advised that it has no assets in or above the Road and no objection to the proposed discontinuance of the Road.
- 4.22 Optus has advised that it has no assets in or above the Road.
- 4.23 CitiPower and Melbourne Water have advised that they have no objection to the proposed discontinuance of the Road.
- 4.24 On 4 October 2018, Telstra advised in writing that it has assets in the near vicinity of the Road, but would not object to the proposed discontinuance of the Road provided that the Owner:
- Calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road to determine the exact location of Telstra assets; and
 - In the event that Telstra's assets require relocation, to engage Telstra's Asset Relocation team to obtain a quote to relocate the assets.
- 4.25 On 29 October 2018, South East Water advised in writing that there is a sewer main located in the vicinity of the Road. South East Water does not object to the proposed discontinuance of the Road provided that a suitably sized easement is created over the sewer main.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Before proceeding with the Road discontinuance, Council must give public notice of the Proposal in accordance with section 223 of the Act. The Act provides that a person may, within 28 days of the date of public notice, lodge a written submission regarding the Proposal.
- 5.2 Where a person has made a written submission to Council requesting that he or she be heard in support of the written submission, Council must permit that person to be heard before a meeting of Council or a Special Committee of Council which has



delegated authority to hear those submissions, giving reasonable notice of the day, time and place of the meeting.

- 5.3 After hearing any submissions made, Council must determine whether the Road is not reasonably required as a road for public use, in order to decide whether the Road should be discontinued.

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's Policy enables roads that are no longer required for public access to be discontinued and sold to the adjoining owner(s).
- 6.3 Council's Policy ensures that roads reasonably required for public access remain open to the public and those not reasonably required for public access may be discontinued and sold. Each proposed road discontinuance and sale is assessed independently of any related planning permit application. Such 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 for this case have been raised, they have been considered in the assessment.
- 6.4 Under the planning permit for 119-125 Market Street, 80-94 Cecil Street and 3-5 Northumberland Street, the Owner must provide evidence in writing that an agreement has been reached to purchase from Council the Road as incorporated in the development and proposed to be built over. In addition, should the purchase of the Road not proceed, the development would need to be revised to Council's satisfaction.

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 of the land in the Road is \$8,000 per square metre plus GST, totalling a purchase price of \$736,000 plus GST. The valuation was undertaken on 6 May 2019, which is still current at the date of this report. In accordance with Council's Policy and previous sales of roads, the value attributed to the land in the Road is based on the following assumptions:
 - 7.2.1 Full value of the land is applicable to the Road as though it is consolidated with the Owner's existing property;
 - 7.2.2 No discount is applicable to the full land value due to the limited purchasing market of the Road;
 - 7.2.3 The Road is not valued on the "before and after" method but instead based on the "street land value rate" of the consolidated site assuming the Road is consolidated with the Owner's existing property.



- 7.3 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.
- 7.4 The Road is made up of bluestone pitchers which Asset Management team confirmed to be currently worth \$216 per square metre. Any material in the road proposed to be discontinued of value to Council will be purchased by the purchaser at time of sale at the current market value of such materials under Council's Policy. The Owner may either purchase the bluestone pitchers within the Road at market value or reimburse Council's costs incurred in removing the bluestone pitchers from the Road.
- 7.5 The Owner has agreed to reimbursing Council's costs incurred in removing the bluestone pitchers from the Road if Council believes they still have value.

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 proposed discontinuance and sale of the Road will enable the land in the Road to be re-purposed.
- 9.3 Council's Public Space Strategy is investigating opportunities for laneways and other inner urban spaces to provide non-conventional public space opportunities. South Melbourne is an area where this type of provision could occur. However, Recreation and Open Space Planning team has advised that this Road would be quite difficult to activate as it is oriented away from the activity of the South Melbourne Market. It also appears that the adjacent Owner may not be a willing partner in such process.
- 9.4 If Council resolves to discontinue and sell the Road, 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 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.

The Proposal is in accordance with Council's Policy.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 A surveyor will be engaged to prepare a title plan, consolidation plan and gazettal plan for the land in the Road.

ORDINARY MEETING OF COUNCIL 16 OCTOBER 2019



11.1.2 A public notice will invite submissions from interested persons within 28 days of publication date. The notice will be published in Port Phillip Leader on 29 October 2019.

11.1.3 After hearing any submissions made, Council must determine whether the Road is not reasonably required as a road for public use, in order to decide whether the Road should be discontinued.

11.2 COMMUNICATION

11.2.1 Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.

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. TP 965714M
2. Locality Plan
3. Title Plan
4. Site Inspection Report