



14.4 PROPOSED DISCONTINUANCE AND SALE OF ROAD AT THE REAR OF 225 PAGE STREET, MIDDLE PARK

EXECUTIVE MEMBER: JOANNE MCNEILL, ACTING GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR

1. PURPOSE

1.1 This report seeks Council's approval to complete the statutory procedures pursuant to the *Local Government Act 1989* (Vic) (**Act**) and finalise the discontinuance and sale of the road at the rear of 225 Page Street, Middle Park, being the whole of the land contained in certificate of title volume 2368 folio 519 (**Road**) and shown marked as lot '1' on the Title Plan attached as Attachment 1 to this report, to the owner of 225 Page Street, Middle Park (**225 Page Street**).

2. EXECUTIVE SUMMARY

- 2.1 The Road is approximately 9 square metres in area and abuts 225 Page Street.
- 2.2 The Road is not constructed as a road and comprises a narrow (1.5 metre wide) pathway covered with fallen vegetation.
- 2.3 The previous owner of 225 Page Street (**Previous Owner**) requested that Council discontinues the Road and sells the Road to them.
- 2.4 The owner of 227 Page Street, Middle Park (**Current Owner**) subsequently purchased 225 Page Street from the Previous Owner and was registered on title on 14 May 2019.
- 2.5 The Current Owner requested that Council continues the statutory procedures to discontinue the Road and sells the Road to them.
- 2.6 The Road is not considered ideal for Public Open Space (POS) or other community use due to the Road's limited width and size.
- 2.7 Each proposed road discontinuance is evaluated independent of any planning permit application. Nonetheless, enquiries have been made to the Planning team that has confirmed the purchase of the Road is not a condition of the planning permit application to consolidate the properties at 225 Page Street and 227 Page Street, Middle Park as a single dwelling. No planning permit has been issued as yet.
- 2.8 At its meeting on 5 June 2019, Council resolved to:
 - 2.8.1 remove the Road from Council's Register of Public Roads; and
 - 2.8.2 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 Current Owner.
- 2.9 Council did not receive any submissions in response to the public notice.
- 2.10 Officers propose that Council considers completing the statutory procedures pursuant to the Act and finalising the discontinuance and sale of the Road to the Current 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 as 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 2368 folio 519:

- 3.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use;
- 3.2 resolves to sell the discontinued Road, for the market value of \$54,000 plus GST, to the registered proprietor of 225 Page Street, Middle Park (**225 Page Street**);
- 3.3 notes that 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 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;
- 3.5 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 registered proprietor of 225 Page Street; and
- 3.7 directs that the registered proprietor of 225 Page Street be required to consolidate the title to the Road with the title to their property within 12 months of the date of the transfer of the discontinued Road.

4. KEY POINTS/ISSUES

4.1 Background

4.1.1 The Road, shown delineated red on the locality plan attached as Attachment 2 (**Locality Plan**), abuts 225 Page Street, shown delineated green on the Locality Plan.

4.1.2 The Road also abuts the following properties at:

- a) 1/227 Page Street, Middle Park, being the land contained in certificate of title volume 9119 folio 422 (**1/227 Page Street**); and
- b) 1/130 Neville Street, Middle Park, being the land contained in certificate of title volume 4349 folio 760 (**1/130 Neville Street**);

together, the **Adjoining Properties**.

4.1.3 The Adjoining Properties are shown delineated blue on the Locality Plan.

4.1.4 The Previous Owner requested that Council discontinues the Road and sells the Road to them (**Proposal**).



4.1.5 The Previous Owner 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.

4.1.6 The Previous Owner sold 225 Page Street to the Current Owner and the Current Owner wishes to proceed with the Proposal.

4.1.7 The Current 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 Current Owner.

4.2 Road

4.2.1 The Road is shown as a 'road' on Title Plan TP871203M attached as Attachment 3.

4.3 The Road is not considered ideal for Public Open Space (POS) or other community use due to the Road's limited width and size.

4.4 Each proposed road discontinuance is evaluated independent of any planning permit application. Nonetheless, enquiries have been made to the Planning team that has confirmed the purchase of the Road is not a condition of the planning permit application to consolidate the properties at 225 Page Street and 227 Page Street, Middle Park as a single dwelling. No planning permit has been issued as yet.

4.5 Council has statutory powers to consider discontinuing the Road.

4.5.1 It is considered that the Road is no longer reasonably required for general public use as the Road:

- a) is not wide enough to provide vehicular access to the car park at the rear of 227 Page Street, Middle Park (**227 Page Street**);
- b) is not required for public access as it only connects to the private property located at 227 Page Street from the laneway between Page Street and Neville Street, Middle Park;
- c) is fenced off from the adjoining properties at 225 Page Street and 1/130 Neville Street; and
- d) provides only pedestrian access to the car park owned by the Current Owner at the rear of 227 Page Street, Middle Park, which has alternative access from Page Street.

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

4.6 Consolidation

If the Road is discontinued and sold to the Current Owner, Council will require the Current Owner to consolidate the title to the discontinued Road with the title to the Current Owner's land within 12 months of the date of transfer of the discontinued Road to them, at the Current Owner's expense.

4.7 Adjoining Owners

4.7.1 On 6 September 2017, Council wrote to the owners of the Adjoining Properties, and the owner of 130 Neville Street, Middle Park, shown delineated purple on the



Locality Plan (**130 Neville Street**), to request their written consent to the Proposal on behalf of the Previous Owner.

4.7.2 In an email dated 28 November 2017, the Current Owner being the registered proprietor of 1/227 Page Street consented to the Proposal.

4.7.3 Council received an email dated 30 November 2017 on behalf of CitiPower, in its capacity as the owner of 1/130 Neville Street, consenting to the Proposal, subject to an easement being granted in its favour pursuant to the *Electricity Industry Act 2000* (Vic).

4.7.4 An appropriate easement in favour of CitiPower has been incorporated on the Title Plan.

4.7.5 In an email dated 4 December 2017, the owner of 130 Neville Street consented to the Proposal.

4.8 **Public Notice**

4.8.1 On 25 June 2019, a public notice was published in the Port Phillip Leader pursuant to sections 207A and 223 of the Act, with a deadline for submissions of 23 July 2019.

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

4.9 **Public Authorities**

4.9.1 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:

- a) Council;
- b) South East Water;
- c) Melbourne Water;
- d) Multinet;
- e) CitiPower;
- f) Telstra; and
- g) Optus.

4.9.2 Council Asset Management team has advised it has no assets in or above the Road and has no objection to the Proposal.

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

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

4.9.5 In a letter dated 19 March 2018, South East Water advised that it has assets in the Road, and requires a suitably sized sewerage easement in its favour over the existing 100mm sewer main located in the Road. A sewerage easement in favour of South East Water has been incorporated on the Title Plan.

4.9.6 In a letter dated 23 March 2018, Telstra advised that it has assets in the near vicinity of the Road, but would not object to the discontinuance of the Road



provided that the Current Owner calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road.

4.9.7 Notwithstanding its response (in its capacity as adjoining owner of 1/130 Neville Street) dated 30 November 2017, CitiPower advised in writing on 24 April 2018 that it has no objection to the proposed discontinuance of the Road.

4.9.8 On 3 June 2019, CitiPower clarified in writing that it would require a 1 metre easement from the wall of its substation located at 1/130 Neville Street. An appropriate easement in favour of CitiPower has been incorporated on the Title Plan.

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 25 June 2019, inviting submissions in accordance with section 223 of the Act.

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

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

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 Discontinuance and Sale of Roads Policy (**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 Current 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 Discontinuance and Sale of Roads policy.

7.2 The market valuation obtained by Council assessed the Road as \$6,000 per square metre plus GST, multiplied by 9 square metres, thus equating to \$54,000.00 plus GST.

7.3 The Current 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 Current 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.



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- 9.2 The proposed discontinuance and sale of the Road will enable the land in the Road to be re-purposed.
- 9.3 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 and sale 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.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 If the Proposal is approved,

- a) a notice will be published in the *Victoria Government Gazette* to formally discontinue the Road; and
- b) 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 an opportunity to make submissions in respect of the Proposal. As no submissions were received, Council may now determine whether to discontinue and sell the Road.
- 11.2.2 The Current 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:	20/13/24
ATTACHMENTS	1. Title Plan
	2. Locality Plan
	3. Title Plan 871203M