



ORDINARY MEETING OF COUNCIL 6 NOVEMBER 2019

- 2.8 Accordingly, under the Act, Council is not precluded from selling the land in the Road to the adjoining owner, if subsequently discontinued, for its original valuation of \$529,200 plus GST, which the adjoining owner has accepted. In addition, the cost of the bluestone pitchers within the Road (currently at \$216 per square metre) will be borne by the adjoining owner.
- 2.9 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 set 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 abutting 285-287 Inkerman Street and 3-7 Nelson Street, Balaclava (**Road**), 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 under clause 3 of Schedule 10 of the Local Government Act 1989 (Vic) (Act),
- resolves that the statutory procedures be commenced to discontinue the Road;
 - 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;
 - 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 its previously assessed market value of \$529,200 plus GST;
 - notes that the adjoining owner has agreed to purchasing the bluestone pitchers within the Road at the current market value of \$216 per square metre;
 - 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;
 - authorises the Chief Executive 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
 - 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 approximately 126 square metres is shown as lot '1' on the title plan attached as Attachment 1 to this report (**Title Plan**).



ORDINARY MEETING OF COUNCIL 6 NOVEMBER 2019

- 4.2 The Road, shown delineated red on the locality plan attached as Attachment 2 (**Locality Plan**).
- 4.3 The owner of 3-5 Nelson Street, Balaclava (**Owner**) has requested that Council discontinues the Road and sells the Road to them (**Proposal**).
- 4.4 The Road also abuts the following properties:
- 285 Inkerman Street, Balaclava (**285 Inkerman**);
 - 287 Inkerman (**287 Inkerman**); and
 - 7 Nelson Street, Balaclava (**7 Nelson**),

which are each owned by the Owner, and shown delineated green on the Locality Plan (together, the **Adjoining Properties**).

- 4.5 The Owner has agreed to pay Council's costs and disbursements associated with the Proposal, together with the market value for the transfer of the discontinued Road to the Owner.

Road

- 4.6 The Road is comprised of the whole of the land contained in:
- certificate of title volume 2087 folio 350 (**Torrens Parcel**); and
 - Conveyance Book 107 No.503 (**General Law Parcel**).
- 4.7 The Road is known to title as:
- in respect of the Torrens Parcel, land encumbered by a carriageway easement; and
 - in respect of the General Law Parcel, a 'way' on the plan in Application No. 36142, a copy of which is attached as Attachment 3.
- 4.8 A carriageway easement is a 'right of way', which is a 'road' for the purposes of the Act. A 'right of way' is a 'road' for the purposes of the Act. The Road is therefore a 'road' for the purposes of the Act. Council has statutory power to consider discontinuing the Road.
- 4.9 The Road consists of laneway numbers R3821 and R3823 on Council's Intramaps.
- 4.10 R3823 is listed on Council's Register of Public Roads while R3821 is not. It must be noted however that R3821 and R3823 have one asset ID number 241 on the previous City of St Kilda Inventory maps proving that the Road comprises both laneways.
- 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.
- 4.14 It is considered that the Road is no longer reasonably required for general public use as the Road is not required for public access to 3-5 Nelson Street, Balaclava and the Adjoining Properties.
- 4.15 If the Road is discontinued, the Road will vest in Council.

Consolidation

- 4.16 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 Owner's land within 12 months of the date of transfer of the Road to the Owner, at the Owner's expense.

Site Inspection

- 4.17 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.
- 4.18 A copy of the site inspection report is attached as Attachment 4 to this report.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 As the Owner owns 3-5 Nelson and Street, Balaclava and the Adjoining Properties, it was not required to seek the written consent of any other adjoining owner.
- 5.2 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;
 - Multinet;
 - Citipower;
 - Telstra; and
 - Optus.
- 5.3 Council Asset Management team has advised that Council has no assets in or above the Road and it has no objection to the Proposal, provided that the Owner, in accordance with Council's Discontinuance and Sale of Roads Policy (**Policy**), either:
- 5.3.1 purchases the bluestone pitchers within the Road at market value (currently at \$216 per square metre); or
 - 5.3.2 reimburses Council's costs incurred in removing the bluestone pitchers from the Road.
- The Owner has agreed to purchasing the bluestone pitchers within the Road at market value (currently at \$216 per square metre) if Council believes they still have value.
- 5.4 Optus has advised that it has no assets in or above the Road.
- 5.5 Melbourne Water and CitiPower have advised that they have no objection to the proposed discontinuance of the Road.
- 5.6 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 Proposal provided that the Owner calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road.
- 5.7 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.
- 5.8 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:
- a) the Owner abandons the existing 100mm sewer and associated infrastructure within the Road;
 - b) a new sewer vent stack is to be installed (at the Owner's cost) at the corner of Inkerman Street and Nelson Street, Balaclava;
 - c) Council's written approval to relocate the sewer stack be provided to South East Water prior to any works. Council Asset Management team have since approved the relocation proposal from South East Water; and
 - d) an agreement be entered into between the Owner and South East Water in respect of the works.



- 5.9 The Owner is currently working directly with South East Water to enter into an acceptable agreement.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Under clause 3 of Schedule 10 of the Act, 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 that roads that are not reasonably required for general public access to be discontinued and sold to the adjoining owner(s), subject to Council approval and statutory requirements.
- 6.3 Council's Policy ensures that roads reasonably required for general public access remain open to the general public and those not reasonably required for general public access may be discontinued and sold.

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 also in accordance with Council's Policy.
- 7.2 The previously assessed market valuation of the land in the Road is \$4,200 per square metre plus GST, equating to \$529,200 plus GST, (\$4,200 x 126 square metres), 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 pay Council's costs and disbursements associated with the proposed discontinuance and sale of the Road.
- 7.7 The Road is made up of bluestone, gravel and concrete. 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.
- 7.8 Asset Management team has confirmed the bluestone pitchers to be currently worth \$216 per square metre.
- 7.9 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.
- 7.10 The Owner has agreed to purchasing the bluestone pitchers within the Road at current market value.

8. ENVIRONMENTAL IMPACT

- 8.1 The Proposal has no detrimental environmental implications.



ORDINARY MEETING OF COUNCIL 6 NOVEMBER 2019

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, proceeds from the sale will go into Council's Strategic Property Reserves to be 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:
 - a) transparent governance and an actively engaged community; and
 - b) 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

- a) Before proceeding with the Proposal, Council must give public notice of the Proposal and invite submissions from interested persons allowing at least 28 days to make a submission in accordance with sections 207A and 223 of the Act. The notice will be published in Port Phillip Leader.
- b) 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 the Committee which has delegated authority to hear those submissions, giving reasonable notice of the day, time and place of the meeting.
- c) After hearing any submissions made, Council must determine whether the Road is reasonably required as a road for general public use, in order to decide whether the Road should be discontinued.

11.2 COMMUNICATION

- a) Council can resolve to commence statutory procedures to discontinue the Road.
- b) A public notice must give details of the Proposal and invite submissions from interested persons allowing at least 28 days to make a submission.
- c) Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.



ORDINARY MEETING OF COUNCIL 6 NOVEMBER 2019

- d) After submissions have been considered, Council may decide to proceed with the discontinuance and sale of all or any part of the Road or to reject the Proposal in its entirety.
- e) If approved, Council must publish a notice in the Government Gazette and attend to the transfer of the discontinued Road.

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. Application No. 36142
4. Site Inspection Report