

**13.2** PROPOSED DISCONTINUANCE OF PART OF ROAD  
ABUTTING 50 NIMMO STREET, MIDDLE PARK

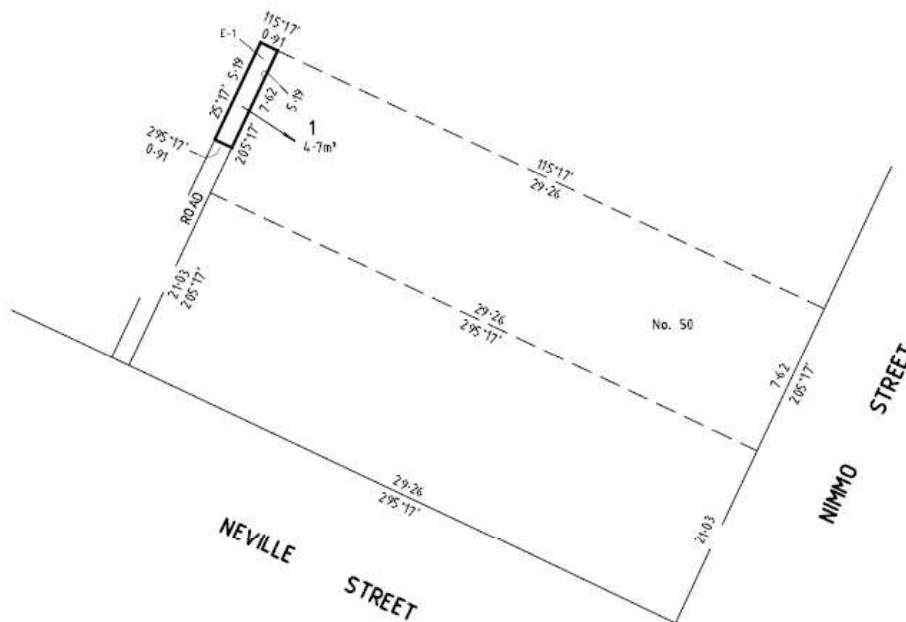
**EXECUTIVE MEMBER:** LACHLAN JOHNSON, GENERAL MANAGER, CUSTOMER,  
OPERATIONS AND INFRASTRUCTURE

**PREPARED BY:** EMMA MURDOCH, EXECUTIVE MANAGER PROPERTY AND  
ASSETS

BRIDGETTE KENNEDY, TEAM LEADER PROPERTY OPERATIONS

**1. PURPOSE**

- 1.1 To consider whether part of the road abutting 50 Nimmo Street, Middle Park, being part of the land contained in Crown Grant 1436 folio 082 and part of the land contained in certificate of title volume 6354 folio 984, being part of R1987 shown as lot 1 on proposed title plan TP965737Y attached as Attachment 1 to this report (**Road**), and excerpt of which is provided below, should be discontinued pursuant to the *Local Government Act 1989 (Vic)* (**Act**) and sold to the adjoining owner.



**2. EXECUTIVE SUMMARY**

- 2.1 The Road in question is 4.7 square meters in total area and abuts 50 Nimmo Street, Middle Park, 254-256 Richardson Street, Middle Park and 48 Nimmo Street, Middle Park.
- 2.2 The owner of 50 Nimmo Street, Middle Park (Owner) has requested that Council discontinues and sells part of the Road to them (Proposal).
- 2.3 At its meeting on 3 August 2022, Council resolved to:
- 2.3.1 remove the Road in question from the Register; and



2.3.2 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 for market value plus legal fees.

- 2.4 Council did not receive any submissions in response to the public notice.
- 2.5 Council is now in a position to consider whether to discontinue and sell the Road to the Owner.
- 2.6 Officers recommend that Council discontinues the Road and sells it to the Owner, for market value (estimated at \$37,500 plus GST) plus reimbursement of Council's costs to facilitate this transaction. The proceeds of the sale will be held in Council's Strategic Property Reserves to support future property acquisition and development.

### 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 being part of the land contained in Crown Grant 1436 folio 082 and part of the land contained in certificate of title volume 6354 folio 984, being part of R1987 shown as lot 1 on proposed title plan TP965737Y attached as Attachment 1 to this report (**Road**):

- 3.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use for the for the following reasons:
  - 3.1.1 is part of a laneway which is wholly enclosed between the walls and fences of the adjoining properties, and behind gates at its northern and southern ends;
  - 3.1.2 is not open to the general public for pedestrian or vehicular access; and
  - 3.1.3 does not form part of a thoroughfare for pedestrian or vehicular traffic to any other public road.
- 3.2 resolves to sell the discontinued Road for market value (estimated at \$37,500 plus GST) to the owner of 50 Nimmo Street, Middle Park (Owner);
- 3.3 notes that proceeds from the sale will go into Council's Strategy Property Reserves used to support the acquisition and development of the property portfolio;
- 3.4 directs that a notice pursuant to clause 3 of Schedule 10 of the Local Government Act 1989 (Vic) is published in the Victorian Government Gazette;
- 3.5 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;
- 3.6 directs that any easements, rights or interests required to be created or saved over the Road by any public authority be done so and not be affected by the discontinuance and sale of the Road; and
- 3.7 directs that the Owner be required to consolidate the title to the discontinued Road with the title to the Owner's land within in 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 below (**Locality Plan**), abuts 50 Nimmo Street, Middle Park, which is shown delineated green on the Locality Plan (**Owner's Property**).
- 4.2 The 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 its transfer of the discontinued Road to them.
- 4.4 At its meeting on 3 August 2022, Council resolved to:
  - 4.4.1 remove the Road in question from the Register; and
  - 4.4.2 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 for market value plus legal fees.
- 4.5 Council did not receive any submissions in response to the public notice.
- 4.6 Council is now in a position to consider whether to discontinue and sell the Road to the Owner.
- 4.7 The Road has an area of approximately 4.7 square meters and is shown as lot '1' on the proposed Title Plan.





- 4.8 Other than the Owner's Property, the following properties abut the Road:
- 4.8.1 48 Nimmo Street, Middle Park, being the balance of the land contained in certificate of title 6345 folio 984 and shown delineated orange on the Locality Plan (48 Nimmo Street); and
  - 4.8.2 254 Richardson Street, being the land contained in certificates of title volume 5010 folio 921 and volume 7946 folio 199 and shown delineated blue on the Locality Plan (254 Richardson Street).
- 4.9 Additionally, the following properties (which abut the balance of the laneway but do not directly abut the Road) have a legal abuttal on title and a registered right of carriageway over the Road:
- 4.9.1 52 Nimmo Street, Middle Park, being the land contained in certificate of title 3053 folio 555 and shown delineated purple on the Locality Plan (52 Nimmo Street), and
  - 4.9.2 54 Nimmo Street, Middle Park, being the land contained in certificate of title 5309 folio 659 and shown delineated pink on the Locality Plan (54 Nimmo Street).
- 4.10 The Road is part of the land contained in Crown Grant 1436 folio 082 and part of the land contained in certificate of title volume 6354 folio 984.
- 4.11 The Road is encumbered by carriageway easements on the respective title plans, searches of which are attached as Attachment 2. Carriageway easements are 'rights of way', which are 'roads' for the purposes of the Act
- 4.12 The Road is part of laneway R1987 which is listed on the Register.
- 4.13 Council has statutory power to consider discontinuing the Road.
- 4.14 If the Road is discontinued, the land will vest in Council free of road status.
- 4.15 It is considered that the Road in question is no longer reasonably required for general public use as it:
- 4.15.1 is part of a laneway which is wholly enclosed between the walls and fences of the adjoining properties, and behind gates at its northern and southern ends;
  - 4.15.2 is not open to the general public for pedestrian or vehicular access; and
  - 4.15.3 does not form part of a thoroughfare for pedestrian or vehicular traffic to any other public road.

#### **SITE INSPECTION**

- 4.16 A site inspection of the Road was conducted by Millar Merrigan on 1 December 2021.
- 4.17 The site inspection notes that:
- 4.17.1 the Road is not constructed as a road;
  - 4.17.2 there is no evidence of the Road being used;
  - 4.17.3 The locked gate at the northern end of the Road (abutting 48 Nimmo Street) does not appear to have been recently used for access to that property;
  - 4.17.4 the gate at the southern end of the laneway (of which the Road forms part) provides access to 115 Neville Street only;



- 4.17.5 the proposed discontinuance of the Road would not affect access to 115 Neville Street from the balance of the laneway;
- 4.17.6 the Road only provides access to the rear of 48 Nimmo Street; and
- 4.17.7 all properties which abut the Road have direct alternative access to the surrounding public roads.

#### **PROPOSAL**

- 4.18 The Owner has requested that Council considers the possible discontinuance and sale of part of the Road (**Proposal**) to allow for the land to be incorporated into the Owner's property.
- 4.19 If the Road is discontinued, the Road will vest in Council.
- 4.20 Once the Road is discontinued, it will be Council's intention to sell the Road to Owner.

#### **CONSOLIDATION**

- 4.21 It will be necessary for the Owner to consolidate the title to the discontinued part of the Road with its existing property title.

### **5. CONSULTATION AND STAKEHOLDERS**

- 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 Port Phillip City Council;
  - 5.1.2 South East Water;
  - 5.1.3 Melbourne Water;
  - 5.1.4 CitiPower;
  - 5.1.5 Multinet Gas;
  - 5.1.6 Telstra; and
  - 5.1.7 Optus.
- 5.2 Council's Asset Management Team has advised that Council has no assets in or above the Road and no objection to the Proposal.
- 5.3 Optus has advised that it has no assets in or above the Road.
- 5.4 Melbourne Water, CitiPower and Multinet Gas have advised that they have no objection to the Proposal.
- 5.5 In a letter dated 1 November 2021, 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:
  - 5.5.1 calls 'Dial Before You Dig' before carrying out any construction activities in the vicinity of Telstra's communication plant;
  - 5.5.2 upon receipt of plans, obtains a Telstra accredited Asset Plant Locator to confirm the location of the plant.
- 5.6 In a letter dated 11 November 2021, South East Water advised it has an existing 150mm diameter VC sewer branch within the area, but would not object to the Proposal provided that upon consolidation of the Road, an appropriately sized



sewerage easement in favour of South East Water be included over the sewer main. A sewerage easement in favour of South East Water was included on the Title Plan.

- 5.7 Council has notified the community of the Proposal through a public notice in The Age newspaper on 26 August 2022, inviting submissions in accordance with section 223 of the Act.
- 5.8 The deadline for submissions was on 22 September 2022.
- 5.9 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 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 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 Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value for its transfer of the discontinued Road to them.
- 7.3 The market valuation of the land in the Road is \$8,000 per square metre plus GST totalling a purchase price of \$37,500 plus GST. The valuation was undertaken on 2 June 2022 and an updated valuation will be sought by Council prior to any transfer. 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:
  - 7.3.1 full value of the land is applicable to the Road as though it is consolidated with the Owner's property.
  - 7.3.2 no discount is applicable to the full land value due to the limited purchasing market for the Road; and
  - 7.3.3 the Road is not valued on the "before and after" method but is instead valued on the "street land value rate" of the consolidated site assuming the Road is consolidated with the Owner's property.

## 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 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 proposal aligns with the Strategic Direction 5 – “*Well Governed Port Phillip*” in the Council Plan 2021-2031: A City that is a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

## **11. IMPLEMENTATION STRATEGY**

### **11.1 TIMELINE**

- 11.1.1 a notice will be published in the *Victorian 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 five (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 material or general interest in the matter.

## **ATTACHMENTS**

- 1. Proposed Title Plan TP965737Y**
- 2. Surrounding Title Plans**