



14.3 PROPOSED DISCONTINUANCE AND SALE OF ROAD
ABUTTING 1 LITTLE GRAHAM STREET, ALBERT PARK

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 whether the road abutting 1 Little Graham Street, Albert Park, being the whole of the land contained in certificate of title volume 1458 folio 525 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 1 Little Graham Street, Albert Park (**1 Little Graham Street**).

2. EXECUTIVE SUMMARY

2.1 The Road is approximately 7 square metres in area and abuts 1 Little Graham Street.

2.2 The Road is:

2.2.1 enclosed within the fenced boundaries of 1 Little Graham Street; and

2.2.2 not available for public use.

2.3 The owner of 1 Little Graham Street (**Owner**), has requested that Council discontinues the Road and sells the Road to them.

2.4 At its meeting on 5 June 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 Owner.

2.5 Council did not receive any submissions in response to the public notice.

2.6 Council is now in a position to consider whether to discontinue and sell the Road to the Owner.



3. RECOMMENDATION

That Council:

- 3.1 Having considered that there were no submissions in response to the public notice regarding the proposed discontinuance and sale of the road shown 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 1458 folio 525:
 - 3.1.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use for reasons set out in the report;
 - 3.1.2 resolves to sell the discontinued Road, for the market value of \$45,500 plus GST, to the owner of 1 Little Graham Street, Albert Park (Owner);
 - 3.1.3 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;
 - 3.1.4 directs that a notice pursuant to clause 3 of Schedule 10 of the *Local Government Act 1989 (Vic)* (Act) is published in the *Victoria Government Gazette*;
 - 3.1.5 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; and
 - 3.1.6 directs that the Owner be required to consolidate the title to the discontinued Road with the title to 1 Little Graham Street, Albert Park within 12 months of the date of 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 1 Little Graham Street, being the whole of the land contained in certificate of title volume 1833 folio 542 and shown delineated green on the Locality Plan.
- 4.2 The Owner has requested that Council discontinues the Road and sells the Road to them (**Proposal**).
- 4.3 The Road also abuts 2 Barrett Street, Albert Park, being the whole of the land contained in certificate of title volume 8462 folio 036, shown delineated blue on the Locality Plan (**2 Barrett Street**).
- 4.4 The Road is currently fenced into the Owner's land and has been fenced in for many years.
- 4.5 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 sale of the discontinued Road to them.



Road

- 4.6 The title to the Road is contained in certificate of title volume 1458 folio 525, being lot 1 on title plan TP941360G, which is attached as Attachment 3. The Road is described as a 'carriageway easement' on the title plan. A carriageway easement is a right of way, which is a 'road' for the purposes of the Act. Council has the statutory power to discontinue the Road.
- 4.7 It is considered that the Road is not reasonably required for public use as the Road is:
- enclosed within the fenced boundaries of 1 Little Graham Street; and
 - not open and not available for public use.
- 4.8 If the Road is discontinued, the Road will vest in Council.

Consolidation

- 4.9 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 discontinued Road to the Owner, at the Owner's expense.

Adjoining Property

- 4.10 The Owner was required to seek the written consent of the owner of 2 Barrett Street (**Adjoining Owner**) to the Proposal.
- 4.11 On 1 June 2018, the Adjoining Owner provided their written consent to the Proposal.

5. CONSULTATION AND STAKEHOLDERS

Public Notice

- 5.1 On 25 June 2019, a public notice was published in the Port Phillip Leader newspaper pursuant to sections 207A and 223 of the Act, with a deadline for submissions of 23 July 2019.
- 5.2 No submissions were received by Council in response to the public notice.

Public Authorities

- 5.3 The following statutory authorities have been advised of the Proposal 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) CitiPower;
 - e) Multinet;
 - f) Telstra; and
 - g) Optus.



- 5.4 Council's Assets team has advised that Council has no assets in or above the Road and that it has no objection to the Proposal.
- 5.5 Multinet has advised that it has no assets in or above the Road and no objection to the Proposal.
- 5.6 Optus has advised that it has no assets in or above the Road.
- 5.7 Melbourne Water and CitiPower have advised that they have no objection to the Proposal.
- 5.8 In a letter dated 26 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.
- 5.9 In a letter dated 18 February 2019, South East Water advised it has no assets in the near vicinity of the Road and would not object to the Proposal provided that the Owner complies with necessary precautions in respect of potential asbestos fibre if carrying out works in the vicinity of the Road.

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).
- 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.

7. FINANCIAL IMPACT

- 7.1 The Owner has agreed to acquire the Road for its market value (plus GST). If Council proposes to discontinue and sell the Road, it will need to obtain a valuation of the land in the Road in accordance with the Act. This is in accordance with the Policy.
- 7.2 The market valuation provided by Council approved valuer assessed the land in the Road to be \$6,500 per square metre plus GST (multiplied by 7 square metres), equating to \$45,500 plus GST. 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 and



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 sale 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 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 proposed 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.

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

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 If the Proposal is approved:

- a notice will be published in the *Victoria Government Gazette* to formally discontinue the Road; and
- 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. As no submissions were received, Council may now determine whether to discontinue and sell the Road.

ORDINARY MEETING OF COUNCIL 18 SEPTEMBER 2019



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: 20/13/24
ATTACHMENTS

1. Title Plan Showing the Road
2. Locality Plan
3. TP941360G