



14.2 **PROPOSED DISCONTINUANCE AND SALE OF ROADS:
PART R3517 ADJOINING 316-320 ST KILDA ROAD, ST KILDA
AND R3257 ABUTTING 91-95 MONTAGUE STREET, SOUTH
MELBOURNE**

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

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

1. PURPOSE

1.1 To seek 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 following roads:

1.1.1 part R3517, the road adjoining 316-320 St Kilda Road, St Kilda being part of the land contained in general law conveyance book U number 983 (**Road 1**);

1.1.2 R3257, the road abutting 91-95 Montague Street, South Melbourne, being the land contained in certificate of title volume 403 folio 592 (**Road 2**).

2. EXECUTIVE SUMMARY

2.1 Road 1 is approximately 23 square metres. It is enclosed within the fenced boundaries of 316-320 St Kilda Road, St Kilda. It is not open and is not available for public use.

2.2 On 21 March 2018, Council resolved to remove Road 1 from Council's Register of Public Roads and commence the statutory procedures to discontinue Road 1 pursuant to the Act.

No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 10 April 2018. Deadline date of submissions was on 8 May 2018.

It is considered that Road 1 is not reasonably required for public use as:

- Road 1 is enclosed within the fenced boundaries of 316-320 St Kilda Road, St Kilda;
- Road 1 is not open and is not available for public use and
- There is no evidence that Road 1 was ever used for public access purposes.

All adjacent properties will still have access to the remaining section of R3517, Inkerman Street or St Kilda Road.

Council is now in a position to complete the statutory procedures and make a final decision.

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- 2.3 Road 2 is approximately 25 square metres. It abuts 91-95 Montague Street, South Melbourne and 89-103 Gladstone Street, South Melbourne. The owner of 89-103 Gladstone Street, South Melbourne (other adjoining owner) previously provided consent to the proposed discontinuance and sale of Road 2 to the registered proprietor of 91-95 Montague Street, South Melbourne.
- 2.4 On 21 March 2018, Council resolved to remove Road 2 from Council's Register of Public Roads and commence the statutory procedures to discontinue Road 2 pursuant to the Act.

No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 10 April 2018. Deadline date of submissions was on 8 May 2018.

It is considered that Road 2 is not reasonably required for public use as:

- Road 2 is not used by the general public and
- There is no evidence that Road 2 was ever used for public access purposes.

Council is now in a position to complete the statutory procedures and make a final decision.



3. RECOMMENDATION

That Council:

- 3.1 Resolves that, having followed all the required statutory procedures in accordance with sections 189, 207A and 233 of the *Local Government Act 1989* (Vic) (**Act**) pursuant to its powers under clause 3 of Schedule 10 of the Act, having considered that there were no submissions received in response to the public notice and being of the opinion that the following roads are not reasonably required for public use, it discontinues these roads:
 - 3.1.1 part R3517, the road adjoining 316-320 St Kilda Road, St Kilda being part of the land contained in general law conveyance book U number 983 (referred to as **Road 1** in this report)
 - 3.1.2 R3257, the road abutting 91-95 Montague Street, South Melbourne, being the land contained in certificate of title volume 403 folio 592 (referred to as **Road 2** in this report).
- 3.2 Directs that notices pursuant to the provisions of Clause 3(a) of Schedule 10 of the Act are published in the Government Gazette.
- 3.3 Directs that once discontinued, Road 1 is transferred to the registered proprietor of 316-320 St Kilda Road, St Kilda for \$138,000 plus GST plus Council's costs incurred in the discontinuance and sale process and Road 2 is transferred to the registered proprietor of 91-95 Montague Street, South Melbourne for \$137,500 plus GST plus Council's costs incurred in the discontinuance and sale process.
- 3.4 Directs that the Chief Executive Officer or delegate signs an authorisation allowing Council solicitors to execute the transfer documents on Council's behalf for Road 1 and Road 2 and any other documents required to be signed in connection with the discontinuance of Road 1 and Road 2 and their subsequent transfer to the registered proprietors of 316-320 St Kilda Road, St Kilda and 91-95 Montague Street, South Melbourne, respectively.
- 3.5 Directs that any easements, rights or interests required to be created or saved over Road 1 and Road 2 respectively by any authority be done so and not be affected by the discontinuance and sale.
- 3.6 Directs that the registered proprietor of 316-320 St Kilda Road, St Kilda be required to consolidate the title to Road 1 with the title to their property within 12 months of the date of transfer of the discontinued road.
- 3.7 Directs that the registered proprietor of 91-95 Montague Street, South Melbourne be required to consolidate the title to Road 2 with the title to their property within 12 months of the date of transfer of the discontinued road.

4. KEY POINTS/ISSUES

- 4.1 Part R3517 adjoining 316-320 St Kilda Road, St Kilda (Road 1)
 - 4.1.1 The road approximately 23 square metres is shown as lot 1 on title plan TP 954327G in Attachment 1.



- 4.1.2 The road adjoins 316-320 St Kilda Road, St Kilda and is shown highlighted in yellow on the locality plan in Attachment 2.
 - 4.1.3 The registered proprietor of 316-320 St Kilda Road, St Kilda Marcus Nayman (**Owner 1**) has requested that Council discontinues the road and sells the road to them.
 - 4.1.4 Owner 1 has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the road, together with the agreed market value of the discontinued road.
 - 4.1.5 If the road is discontinued and sold to Owner 1, Council will require Owner 1 to consolidate the title to the discontinued road with the title to their land within 12 months of the date of transfer of the road to them at their expense.
 - 4.1.6 Any easements, rights or interests required to be created or saved over the road by any authority are to be done so and not to be affected by the discontinuance and sale.
- 4.2 Road abutting 91-95 Montague Street, South Melbourne (Road 2)
- 4.2.1 The road approximately 25 square metres is shown as lot 1 on title plan TP 922247K in Attachment 3.
 - 4.2.2 The road abuts 91-95 Montague Street, South Melbourne which is owned by Thousand Degree Pty Ltd (**Owner 2**). It also abuts 89-103 Gladstone Street, South Melbourne (**Adjoining Property**). The owner of the Adjoining Property previously provided consent to the proposed road discontinuance and sale.
 - 4.2.3 The road is shown highlighted in yellow on the locality plan in Attachment 4.
 - 4.2.4 Owner 2 has requested that Council discontinues the road and sells the road to them.
 - 4.2.5 Owner 2 has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the road, together with the agreed market value of the discontinued road.
 - 4.2.6 If the road is discontinued and sold to Owner 2, Council will require Owner 2 to consolidate the title to the discontinued road with the title to their land within 12 months of the date of transfer of the road to them at their expense.
 - 4.2.7 Any easements, rights or interests required to be created or saved over the road by any authority are to be done so and not to be affected by the discontinuance and sale.



5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council has notified the community through a public notice in the Port Phillip Leader newspaper on 10 April 2018 for Road 1 and Road 2 respectively inviting submissions in accordance with the statutory procedures described in section 223 of the Act.
- 5.2 In response to the public notice, no submissions were received.
- 5.3 Relevant Council departments have been notified by way of internal referral. Service authorities have also been consulted to determine requirements for easements.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 There is no evidence that Road 1 and Road 2 are used for public access purposes.
- 6.2 Under clause 3 of Schedule 10 of the Act, Council has the power to discontinue roads within its municipality and sell the land from that road or retain the land for itself.
- 6.3 Council has a 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 registered proprietor of 316-320 St Kilda Road, St Kilda has agreed to acquire Road 1 for its market value plus GST. Council's valuer assessed the market value to be \$6,000 per square metre. This multiplied by the area of approximately 23 square metres equates to \$138,000 plus GST. The registered proprietor has also agreed to pay Council's costs and disbursements associated with the proposed road discontinuance.
- 7.2 The registered proprietor of 91-95 Montague Street, South Melbourne has agreed to acquire Road 2 for its market value plus GST. Council's valuer assessed the market value to be \$5,500 per square metre. This multiplied by the area of approximately 25 square metres translates to \$137,500 plus GST. The registered proprietor has also agreed to pay Council's costs and disbursements associated with the proposed road discontinuance.

8. ENVIRONMENTAL IMPACT

- 8.1 The proposals for Road 1 and Road 2 have 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 roads will enable the land in Road 1 and Road 2 to be re-purposed.
- 9.3 Proceeds from the sale of Road 1 and Road 2 will go into Council's consolidated revenue to be used for service delivery elsewhere in the organisation.



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The process for discontinuance and sale of roads 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.
 - 10.1.3 The proposals for Road 1 and Road 2 are in accordance with Council's Discontinuance and Sale of Roads Policy.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 If the proposals for Road 1 and Road 2 are approved, the following events will take place over the next months:
- A notice will be published in the Government Gazette to formally discontinue the roads;
 - Solicitors will prepare the land transfer documents so the respective adjoining owners can attend to settlement.

11.2 COMMUNICATION

- 11.2.1 The respective registered proprietors of 316-320 St Kilda Road, St Kilda and 91-95 Montague Street, South Melbourne will be advised of the final Council decision and the reasons for it within five days of the Council meeting.
- 11.2.2 The public notification process provided the community with the opportunity to make submissions. As there were no submissions received, Council will be discontinuing the roads and selling them to the adjoining owners at market value plus other incidental costs incurred in the discontinuance and sale process. This aligns with Council's Discontinuance and Sale of Roads Policy and legislative processes.

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 of Road 1
2. Locality Plan of Road 1
3. Title Plan of Road 2
4. Locality Plan of Road 2