



14.5 **PROPOSED DISCONTINUANCE AND SALE OF ROAD 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 commence the statutory procedures pursuant to the *Local Government Act 1989 (Vic)* (**Act**) to consider discontinuing the road abutting the property at 91-95 Montague Street, South Melbourne, being the land contained in certificate of title volume 403 folio 592 (**Road**).

2. EXECUTIVE SUMMARY

- 2.1 The Road approximately 25 square metres is known to title as a road on title plan TP922247K in Attachment 1. It is therefore a 'road' for the purposes of the Act.
- 2.2 Council has statutory power to consider discontinuing the Road.
- 2.3 The Road is listed on Council's Register of Public Roads.
- 2.4 It is considered that the Road is no longer reasonably required for public use as the Road is not used by the public.
- 2.5 Upon being discontinued, the Road will vest in Council.
- 2.6 Council has authority to remove the Road from Council's Register of Public Roads and to commence the statutory procedures.
- 2.7 The sale of the Road cannot be pre-determined as the proposal has to go through the relevant statutory procedures.



3. RECOMMENDATION

- 3.1 That Council acting under section 17(4) of the *Road Management Act 2004* (Vic) resolves that the road abutting the property at 91-95 Montague Street, South Melbourne, being the land contained in certificate of title volume 403 folio 592 (Road) be removed from Council's Register of Public Roads on the basis that the Road is no longer reasonably required for public use for the reasons set out in the report.
- 3.2 That Council acting under clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) (Act)
- 3.2.1 resolves that the statutory procedures be commenced to discontinue the Road;
- 3.2.2 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. The public notice should state that if the Road is discontinued Council proposes to sell the Road to the adjoining owner for market value;
- 3.2.3 authorises the Chief Executive Officer 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;
- 3.2.4 resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting.

4. KEY POINTS/ISSUES

- 4.1 The Road approximately 25 square metres is shown as Lot 1 on title plan TP922247K.
- 4.2 The Road abuts 91-95 Montague Street, South Melbourne, which is owned by Thousand Degree Pty Ltd (**Owner**).
- 4.3 The Owner has requested that Council discontinues the Road and sells the Road to the Owner (**Proposal**).
- 4.4 The Road, shown highlighted in yellow on the locality plan in Attachment 2 (**Locality Plan**) also abuts the property at 89-103 Gladstone Street, South Melbourne (**Adjoining Property**). The Adjoining Property is shown outlined in red on the Locality Plan.
- 4.5 The Owner was requested to seek the written consent to the Proposal from the owner of the Adjoining Property Nest Melbourne Pty Ltd which it did.



- 4.6 Nest Melbourne Pty Ltd provided its written consent on 31 July 2017 as per Attachment 3.
- 4.7 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 transfer of the discontinued Road to the Owner.
- 4.8 Council's valuer assessed the market value to be \$5,500 per square metre. Thus, the purchase price of the Road equates to \$137,500 plus GST.
- 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 Road to the Owner, at the Owner's expense.
- 4.10 A site inspection of the Road was conducted by Kirkpatrick & Webber Land Surveyors on 18 December 2016. The site inspection report noted the following:
 - 4.10.1 the Road is constructed of bluestone;
 - 4.10.2 the Road does not appear to provide access to the Owner's property or the Adjoining Property and
 - 4.10.3 the Road is not required for public access.

A copy of the site inspection report is contained in Attachment 4.

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



- 5.2 Council has advised that it has no assets in or above the Road.
- 5.3 South East Water has advised that it has sewerage assets in the Road, but would not object to the proposed discontinuance of the Road provided that a suitably sized easement in favour of South East Water is granted over the existing 100 millimetre sewer mains located in the Road.
- 5.4 Melbourne Water, CitiPower and Multinet Gas have advised they have no objection to the proposed discontinuance of the Road.
- 5.5 Jemena and Optus have advised that they have no assets in or above the Road.
- 5.6 Telstra has advised it has assets near the Road, but would not object to the discontinuance of the Road provided that the Owner calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The Road is currently not required for public access.
- 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 Owner has agreed to acquire the Road 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 equates to \$137,500 plus GST.
- 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 the transfer 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 the road discontinuance and sale is in the best interest of the community.



- 9.2 The proposed discontinuance and sale of the Road will enable the land in the Road to be re-purposed.
- 9.3 Proceeds from the sale of the Road 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 Council roads aligns with Strategic Direction 6 Our Commitment to You in the Council Plan 2017-27 through:
 - 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 Before proceeding with the discontinuance, Council must give public notice of the Proposal in accordance with section 223 of the Act. The Act provides that a person may, within 28 days of the date of the public notice, lodge a written submission regarding the Proposal. The notice will be published in Port Phillip newspaper on 10 April 2018.
- 11.1.2 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 meeting.
- 11.1.3 After hearing any submissions made, Council must determine whether the Road is not reasonably required as a road for public use, in order to decide whether the Road should be discontinued.

11.2 COMMUNICATION

- 11.2.1 Council can resolve to commence statutory procedures to discontinue a road.
- 11.2.2 A public notice must give details about what is proposed and invite submissions from interested persons allowing at least 28 days to make a written submission.
- 11.2.3 Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.



- 11.2.4 After submissions have been considered Council may decide to proceed with road discontinuance and sale for all or any part of the subject road or to reject the proposal in its entirety.
- 11.2.5 If approved Council must publish a notice in the Government Gazette and attend to the transfer of the land.

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: 34/14/571-01

ATTACHMENTS

- 1. Title Plan**
- 2. Locality Plan**
- 3. Neighbour's Consent**
- 4. Site Inspection Report**