



ORDINARY MEETING OF COUNCIL 21 MARCH 2018

14.4 PROPOSED DISCONTINUANCE AND SALE OF ROAD PART R3517 ADJOINING 316-320 ST KILDA ROAD, ST KILDA

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 adjoining the property at 316-320 St Kilda Road, St Kilda, being part of the land contained in general law conveyance book U number 983 (**Road**).

2. EXECUTIVE SUMMARY

- 2.1 The Road is approximately 23 square metres and is known to title as a road on the general law plan, as per 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:
- 2.4.1 the Road is enclosed within the fenced boundaries of 316-320 St Kilda Road;
 - 2.4.2 the Road is not required for public access and
 - 2.4.3 the Road is not available for public use.
- 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 adjoining the property at 316-320 St Kilda Road, St Kilda, being part of the land contained in general law conveyance book U number 983 (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 and
- 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 23 square metres is shown as lot '1' on the title plan shown in Attachment 2.
- 4.2 The Road adjoins 316-320 St Kilda Road, St Kilda and is shown highlighted in yellow on the locality plan in Attachment 3 (**Locality Plan**).
- 4.3 The Owner of 316-320 St Kilda Road, St Kilda (the Owner) has requested that Council discontinues the Road and sells the Road to the Owner (**Proposal**).
- 4.4 The Road is next to the properties at 312-314 St Kilda Road, St Kilda and 111-113 Inkerman Street, St Kilda (**Adjacent Properties**). The Adjacent Properties are shown outlined in red on the Locality Plan.
- 4.5 The Owner has been requested to seek the written consent of the owners of the Adjacent Properties.
- 4.6 The Owner has sought the written consent to the Proposal from the owners of the Adjacent Properties but, at the date of this report, such consent has not yet been provided. While not mandatory, it is prudent to seek feedback from the abutting owners who may be affected by the proposal. In this instance however, it is unlikely



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that the owners of the Adjacent Properties will be affected as the Road is enclosed within the Owner's land. Nonetheless, the owners of the Adjacent Properties may or may not opt to provide a written submission on or before the deadline date of the submissions once the public notice has been published.

- 4.7 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the agreed market value being \$6,000 per square metre, of the discontinued Road to the Owner. Thus, the purchase price of the Road translates to \$138,000 plus GST (\$6,000 x 23 square metres).
- 4.8 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.
- 4.9 A site inspection of the Road was conducted by Kirkpatrick & Webber Land Surveyors on 6 November 2017. The site inspection report noted the following:
- 4.9.1 the Road is enclosed within the fenced boundaries of the Owner's land;
 - 4.9.2 there is no evidence that the Road is used for public access purposes and
 - 4.9.3 the Road is not available for public use.

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) Multinet Gas
 - f) Telstra and
 - g) Optus.
- 5.2 Council, South East Water and Optus have advised that they have no assets in or above the Road.
- 5.3 Melbourne Water and Multinet Gas have advised they have no assets in or above the Road and have no objection to the proposed discontinuance of the Road.
- 5.4 CitiPower has advised it has no objection to the proposed discontinuance of the Road.



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- 5.5 Telstra has advised it has no assets near the Road and would not object to the discontinuance of the Road provided that the Owner calls 'Dial Before You Dig' before carrying out works near the Road.
- 5.6 As noted in section 4, the Owner has sought consent of the owners of the Adjacent Properties but has not yet been provided.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The Road to be discontinued is enclosed within the fenced boundaries of the Owner's land. There is no evidence that the Road is used for public access purposes.
- 6.2 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.
- 6.3 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 \$6,000 per square metre. This multiplied by the area equates to \$138,000 plus GST.
- 7.2 The Owner has agreed to pay Council's costs and disbursements associated with the proposed Road discontinuance, 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 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.

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 public notice, lodge a written submission regarding the Proposal. The notice will be published in Port Phillip Leader 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, giving reasonable notice of day, time and place of the 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 of 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.



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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: 78/11/3515

ATTACHMENTS

- 1. General Law Plan**
- 2. Title Plan**
- 3. Locality Plan**
- 4. Site Inspection Report**