



8.8	PROPOSED DISCONTINUANCE AND SALE OF ROAD AT THE REAR OF 47 FAWKNER STREET, ST KILDA
WARD:	LAKE
GENERAL MANAGER:	CHRIS CARROLL, ORGANISATIONAL PERFORMANCE
PREPARED BY:	LYANN SERRANO, PROPERTY ADVISOR
TRIM FILE NO:	78/13/26
ATTACHMENTS:	1. General Law Plan Showing the Road as Right of Way 2. Locality Plan

PURPOSE

This report seeks Council's approval to commence the statutory procedures pursuant to the Local Government Act 1989 (Vic) (**the Act**) to consider discontinuing the road at the rear of 47 Fawkner Street, St Kilda, being part of the land contained in book 52 number 004 (**Road**).

1. RECOMMENDATION

That Council acting under clause 3 of Schedule 10 of the Local Government Act 1989 (the Act):

- 1.1 Resolves that the statutory procedures be commenced to discontinue the road at the rear of 47 Fawkner Street St Kilda being part of the land contained in book 52 number 004 (Road).
- 1.2 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.
- 1.3 Resolves that the public notice required to be given under sections 207A and 223 of the Act should state that if the Road is discontinued, Council proposes to sell the Road to the adjoining owner for \$7,500 plus GST, to be adjusted to CPI annually, in accordance with Council's Discontinuance and Sale of Roads Policy.
- 1.4 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.
- 1.5 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting.

2. BACKGROUND

- 2.1 The Road is at the rear of 47 Fawkner Street, St Kilda, which is owned by Mate and Anica Filipovic (**Owner**).
- 2.2 The Road is shown as a 'right of way' on the general law plan attached as Attachment I to this report.



- 2.3 The Road, shown highlighted yellow on the locality plan attached as Attachment 2, abuts the properties at 56b Havelock Street, St Kilda, 58 Havelock Street, St Kilda and 49 Fawkner Street, St Kilda.
- 2.4 The Road is currently fenced into the Owner's land.
- 2.5 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the purchase price for the transfer of the discontinued Road to the Owner.

3. KEY INFORMATION

- 3.1 The Road is not on Council's road register and therefore it is not a public road.
- 3.2 The Road is not a public highway through gazettal or construction under old legislation and is not a public highway through a declaration under current legislation. There is also no evidence that the Road is a public highway at common law through a dedication of the land as a road and an acceptance by the public as a road.
- 3.3 Given that the Road is neither a public road nor a public highway, the Road does not vest in Council and is considered to be a 'private street'.
- 3.4 As the Road is neither a public road nor a public highway, it is not protected from adverse possession. This is a legal means of acquiring land through long term exclusive and continuous possession.
- 3.5 The Owner has a choice to either claim adverse possession and submit an application to Land Victoria or to ask Council to use its powers of discontinuance and sale.
- 3.6 There is no purchase price for acquiring land under adverse possession but the evidence required to prove adverse possession can be onerous and the process can be expensive.
- 3.7 Council's Discontinuance and Sale of Roads Policy allows for discontinuance and sale in these circumstances for a purchase price of \$7,500 plus GST (adjusted annually to Consumer Price Index from the date of the Policy) plus Council's costs incurred in the discontinuance and sale process.
- 3.8 In this case, the Owner has opted to request Council to undertake the process of discontinuance and sale.
- 3.9 The Road is shown as a 'right of way' on the general law plan attached as Attachment 1. As a right of way on title, it is also a 'road' for the purposes of the Act. This means that the Road qualifies as a road that can be subject to discontinuance and sale.
- 3.10 Upon being discontinued, the Road will vest in Council (pursuant to current legislation) which enables Council to sell the Road.
- 3.11 The Road is unconstructed and enclosed within the fenced boundaries of the Owner's land. There is no evidence that the Road is used for public access purposes. The Road is not open and is not available for public use.
- 3.12 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.



- 3.13 The following statutory authorities have been advised of the proposed discontinuance of Road and have been asked to respond to the question whether they have any existing assets in the Road, which should be saved under section 207C of the Act:
 - 3.13.1 Council
 - 3.13.2 South East Water
 - 3.13.3 Melbourne Water
 - 3.13.4 CitiPower
 - 3.13.5 Multinet
 - 3.13.6 Telstra and
 - 3.13.7 Optus
- 3.14 Council, South East Water and Melbourne Water have advised that they have no assets in or above the Road and have no objection to the proposed discontinuance of the Road.
- 3.15 CitiPower and Multinet have advised that they have no objection to the proposed discontinuance of the Road.
- 3.16 Telstra has advised it has assets in the near vicinity of the Road , but would not object to the proposed discontinuance of the Road provided the Owner call 'Dial Before You Dig' before carrying out works in the vicinity of the Road.
- 3.17 Optus has advised it has no assets in or above the Road.
- 3.18 The following documents have been attached for reference:
 - 3.18.1 Attachment 1: General Law Plan showing the Road as Right of Way
 - 3.18.2 Attachment 2: Locality Plan



FURTHER SUPPORTING INFORMATION

4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 4.1 The process for discontinuance and sale of Council roads aligns with the Strategic Direction 6 in the Council Plan 2017-2027 through supporting:
 - 4.1.1 Transparent governance and an actively engaged community.
- 4.2 The proposal is in accordance with Council's Discontinuance and Sale of Roads Policy.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council will consult with the community through a 'Public Notice' to be published in the Port Phillip Leader inviting submissions in accordance with the statutory procedures.
- 5.2 Relevant Council departments have been notified by way of internal referral. Service authorities have also been consulted to determine the requirement of easements.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The Road to be discontinued is fenced off within the Owner's property. There is no evidence that the Road is used for public access purposes.
- 6.2 Council has powers to discontinue roads under clause 3 of Schedule 10 of the Local Government Act 1989. The definition of a 'road' includes a right of way and laneway.
- 6.3 The price to be paid by the Owner is in accordance with Council's Discontinuance and Sale of Roads Policy.

7. SUSTAINABILITY – Triple Bottom Line

7.1 ENVIRONMENTAL IMPLICATIONS

- 7.1.1 The proposal has no detrimental environmental implications.

7.2 SOCIAL & CULTURAL IMPLICATIONS

- 7.2.1 The proposal has no detrimental social and cultural implications.

7.3 ECONOMIC IMPLICATIONS

- 7.3.1 The proposal has no detrimental economic implications.

7.4 FINANCIAL IMPLICATIONS

- 7.4.1 It is considered that the Owner could acquire the land in the Road via adverse possession. The Owner has demonstrated to the Officer's reasonable satisfaction that the land in the Road has been exclusively and continuously occupied as if it was a part of 47 Fawkner Street, St Kilda, for a very long time. Under Council's Discontinuance and Sale of Roads Policy, Council can sell the Road for \$7,500 plus GST, to be adjusted to CPI annually, plus Council's costs.



8. IMPLEMENTATION STRATEGY

8.1 TIMELINE

- 8.1.1 A surveyor will be engaged to prepare a title plan, consolidation plan and gazettal plan for the land.
- 8.1.2 A 'Public Notice' will invite submissions from interested persons within 28 days of publication date. The notice will be published in Port Phillip Leader on 16 January 2018.
- 8.1.3 Any submissions received may be heard and considered at a future Council meeting.
- 8.1.4 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.

8.2 COMMUNICATION

- 8.2.1 Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.

9. OFFICER DIRECT OR INDIRECT INTEREST

- 9.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.