



13.2 PROPOSED DISCONTINUANCE OF ROAD AT REAR OF 182-192 AND 200 CLARENDON STREET, SOUTH MELBOURNE

EXECUTIVE MEMBER: SIOBHAN BELMORE, ACTING GENERAL MANAGER, OPERATIONS AND INFRASTRUCTURE

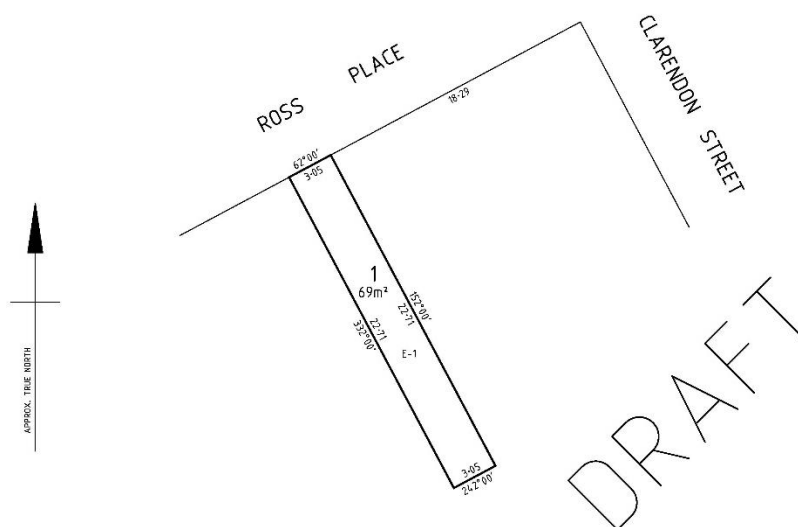
PREPARED BY: BRIDGETTE KENNEDY, TEAM LEADER PROPERTY OPERATIONS

1. PURPOSE

1.1 To consider whether the road adjoining the properties at 182-192 and 200 Clarendon Street, South Melbourne VIC 3205 (**Adjoining Properties**), being the land remaining in Crown Grant 5106/1853 and being part of Crown Allotment 9, Section 2, Town and Parish of Melbourne South, as shown as Lot 1 on proposed title plan TP965753B attached as Attachment 1 to this report (**Road**), an excerpt of which is provided below, should be:

1.1.1 discontinued pursuant to the *Local Government Act 1989* (Vic) (**Act**); and

1.1.2 sold to the adjoining owner(s) of the Adjoining Properties.



2. EXECUTIVE SUMMARY

2.1 The owners of the Adjoining Properties (**Current Owner**) have requested that Council discontinues and sells the Road to them (**Proposal**).

2.2 Council understands the Current Owner has sold the Adjoining Properties to another person (**Incoming Registered Proprietor**) pursuant to a contract of sale dated in April 2022, with settlement expected to take place in October 2023.

2.3 The Road is approximately 69 square meters in total area and adjoins the rear of the properties at 182-192 and 200 Clarendon Street, South Melbourne VIC 3205.

2.4 At its meeting on 16 August 2023, Council resolved to:

2.4.1 remove the Road in question from the 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 the adjoining owner of the Adjoining Properties for market value.
- 2.5 On 15 September 2023, Council gave public notice by publication in The Age newspaper.
- 2.6 Council did not receive any submissions in response to the public notice.
- 2.7 Council is now in a position to consider whether to discontinue and sell the Road to the adjoining owner(s) of 182-192 and 200 Clarendon Street, South Melbourne.
- 2.8 Officers recommend that Council discontinues the Road and sells it to the then current adjoining owner(s) of the Adjoining Properties (whether that is the Current Owner, or the Incoming Registered Proprietor) for market value (which subject to an updated valuation, is estimated at \$700,000 plus GST) plus reimbursement of Council's costs to facilitate this transaction. The proceeds of the sale will be held in Council's Strategic Property Reserves to support future property acquisition and development

3. RECOMMENDATION

That Council having considered that there were no submissions in response to the public notice regarding Council's proposal to discontinue the road being the land remaining in Crown Grant 5106/1853, shown as Lot 1 on proposed title plan TP965753B attached as Attachment 1 to this report (**Road**):

- 3.1 Resolves to discontinue the Road as it considers that the Road is not reasonably required for public use for the following reasons:
 - 3.1.1 the Road is fully enclosed on the eastern, southern and western boundaries by walls of adjoining properties, and is only accessible on the northern boundary leading onto Ross Place;
 - 3.1.2 the Road is only used for pedestrian and vehicular access to the rear of the adjoining properties at 182-192 and 200 Clarendon Street; and
 - 3.1.3 the Road does not form part of a thoroughfare for pedestrian or vehicular traffic to any other public road.
- 3.2 Resolves to sell the discontinued Road for market value (which subject to an updated valuation, is estimated at \$700,000 plus GST) to the then current adjoining owner(s) of the properties at 182-192 and 200 Clarendon Street, South Melbourne VIC 3205;
- 3.3 Notes that proceeds from the sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio;
- 3.4 Directs that a notice pursuant to clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) is published in the Victorian Government Gazette;
- 3.5 Authorises the Chief Executive Officer or their delegate to negotiate, approve, and enter into such documentation to complete the discontinuance, sale, and transfer of the Road as contemplated or described;
- 3.6 Directs that the Chief Executive Officer, or their delegate, signs an authorisation and does all other things reasonably necessary or desirable to enable 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 then



current adjoining owner(s) of 182-192 and 200 Clarendon Street, South Melbourne VIC 3205;

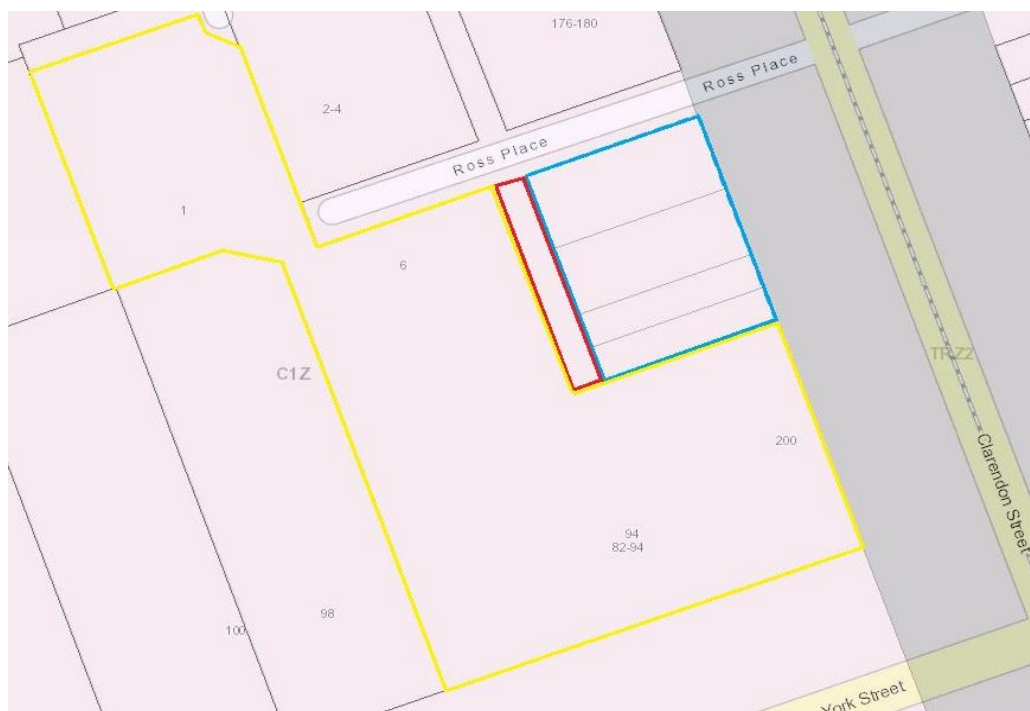
- 3.7 Directs that any easements, rights or interests required to be created or saved over the Road by any public authority be done so and not be affected by the discontinuance and sale of the Road; and
- 3.8 Directs that the then current adjoining owner(s) of 182-192 and 200 Clarendon Street, South Melbourne be required to consolidate the title to the discontinued Road with the title to adjoining owner's land (or such part of it approved by Council) within 12 months of the date of the transfer of the discontinued Road, at that owner's own cost and expense.

4. KEY POINTS/ISSUES

- 4.1 The Road has an area of approximately 69 square meters and is shown as Lot '1' on the proposed Title Plan TP965753B.
- 4.2 As further outlined in items 0 to 0 of this Report, the Current Owner has requested that Council discontinues and sells the Road to the then current owner(s) of the Adjoining Properties.
- 4.3 At its meeting on 16 August 2023, Council resolved to:
 - 4.3.1 remove the Road in question from the Register of Public Roads; and
 - 4.3.2 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 the adjoining owner of the Adjoining Properties for market value.
- 4.4 On 15 September 2023, Council gave public notice by publication in The Age newspaper.
- 4.5 Council did not receive any submissions in response to the public notice.
- 4.6 Council is now in a position to consider whether to discontinue and sell the Road.

The Road

- 4.7 The Road adjoins the rear of the following Adjoining Properties:
 - 4.7.1 182-192 Clarendon Street, South Melbourne VIC 3205, shown delineated blue on the below Locality Plan (**182-192 Clarendon Street**), being comprised of the land contained in certificates of title:
 - (a) volume 9688 folio 508;
 - (b) volume 7920 folio 057;
 - (c) volume 7920 folio 056; and
 - (d) volume 5189 folio 637; and
 - 4.7.2 200 Clarendon Street, South Melbourne VIC 3205, being the land contained in certificate of title volume 9536 folio 501 and shown delineated yellow on the below Locality Plan (**200 Clarendon Street**).



(**Locality Plan**, a copy of which is also attached at Annexure 2).

- 4.8 Additionally, one of the properties at 182-192 Clarendon Street (being the land described in certificate of title volume 7920 folio 057, being lot 1 on TP378616K) has a legal abuttal on title and a registered right of carriageway over the Road (as shown on Title Plan TP378616K).

Adjoining Properties

- 4.9 The Adjoining Properties at 182-192 Clarendon Street and 200 Clarendon Street are owned by two separate, but related, corporate entities, and are considered to be the same owner for the purposes of this report. Therefore, all of the Adjoining Properties are owned by the Current Owner.
- 4.10 It is also noted that the Current Owner has sold the Adjoining Properties to a third party (**Incoming Registered Proprietor**) pursuant to a contract of sale dated April 2022, and settlement of the Adjoining Properties is expected to take place in October 2023.
- 4.11 If Council resolves to discontinue the Road, it is recommended that Council proceeds to sell the Road to the then current owner of the Adjoining Properties at the relevant time (whether it is the Current Owner or the Incoming Registered Proprietor).
- 4.12 The Proposal was submitted to Council by the Current Owner on behalf of the Incoming Registered Proprietor, who, upon settlement of the Adjoining Properties, intends to carry out redevelopment of the Adjoining Properties.
- 4.13 However, for the purposes of proceeding with the Proposal, and in accordance with Council's Discontinuance and Sale of Road Policy, Council can only consider a proposal to discontinue a road which is submitted by a current owner of an adjoining property.
- 4.14 Therefore, the Current 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 of the Adjoining Properties.



- 4.15 The Incoming Registered Proprietor has agreed that, if it is the owner of the Adjoining Properties at the time of the discontinuance of the Road (if resolved), it will be bound by the same terms and conditions to purchase the Road as agreed with the Current Owner, being paying 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 of the Adjoining Properties.
- 4.16 If the Road is discontinued and sold to the owner of the Adjoining Properties, Council will require the owner of the Adjoining Properties to consolidate the title to the discontinued Road with the title to the Adjoining Properties within 12 months of the date of transfer of the Road to the owner of the Adjoining Properties, at that owner's expense. If different owners own different parts of the Adjoining Properties at the time of the transfer or future consolidation, Council may agree that the Road is to be consolidated with only part of the Adjoining Properties.

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:
- 5.1.1 Port Phillip City Council;
 - 5.1.2 Telstra Corporation;
 - 5.1.3 South East Water;
 - 5.1.4 NBN Co;
 - 5.1.5 Multinet Gas;
 - 5.1.6 CitiPower;
 - 5.1.7 Powercor;
 - 5.1.8 APA Group; and
 - 5.1.9 Melbourne Water.
- 5.2 No responses were received by APA Group, Multinet Gas Networks or NBN Co by Council's requested timeframe.
- 5.3 Council's Assets Team advised it has no objection to the Proposal, provided that the Owner, in accordance with Council's Policy, either:
- 5.3.1 purchases the bluestone pitchers within the Road at market value, currently at \$265 per square metre; or
 - 5.3.2 reimburses Council's costs incurred in removing the bluestone pitchers from the Road.
- 5.4 Relevant Council departments have been notified by way of an internal referral.
- 5.5 CitiPower, Powercor and Telstra Corporation have advised that the authorities do not have any assets in or above the Road, and therefore have no objections to the Proposal.
- 5.6 Melbourne Water has advised that they have no objection to the Proposal.
- 5.7 In a letter dated 29 June 2023, South East Water advised it has an existing 150mm diameter VC sewer branch within the area, but would not object to the Proposal



provided that upon consolidation of the Road, an appropriately sized sewerage easement in favour of South East Water be included over the sewer main. A sewerage easement in favour of South East Water was included on the Title Plan.

- 5.8 Council has notified the community of the Proposal through a public notice in The Age newspaper on 15 September 2023, inviting submissions in accordance with section 223 of the Act.
- 5.9 The deadline for submissions was on 13 October 2023.
- 5.10 No submissions were received by Council in response to the public notice.

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. Council must first give notices in accordance with sections 207A and 223 of that Act.
- 6.2 Under section 114 of the *Local Government Act 2020 (2020 Act)*, a council must comply with that section if it sells or exchanges land. Section 114 requires that (unless section 1166 applies) before selling or exchanging land, a council must at least 4 weeks prior to the sale or exchange publish notice of its intention to do so on council's website and in any other prescribed manner, undertake a community engagement process in accordance with its community engagement policy, and obtain a valuation from a person qualified under section 13DA(2) of the *Valuation of Land Act 1960* made not less than 6 months prior to the sale or exchange.
- 6.3 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).
- 6.4 Council's Policy also ensures that roads reasonably required for public access remain open to the public.

7. FINANCIAL IMPACT

- 7.1 The owner of the Adjoining Properties (being the Current Owner at the time of this report), and the Incoming Registered Proprietor (if it becomes the owner of the Adjoining Properties at the time if Council resolves to discontinue the Road) has agreed to:
 - 7.1.1 acquire the Road for its market value (plus GST). If Council proposes to transfer the Road, it will need to obtain a valuation of the Road in accordance with the 2020 Act. This is in accordance with Council's Policy; and
 - 7.1.2 pay Council's costs and disbursements associated with the proposed discontinuance of the Road.
- 7.2 As at 4 December 2022, the market valuation of the land in the Road was \$10,500 per square metre plus GST totalling \$700,000 plus GST (rounded off by Council's appointed valuers). The valuation was undertaken on 4 December 2022 and an updated valuation will be sought by Council prior to executing any contract of sale or transfer. In accordance with the Policy and previous sales of roads, the value attributed to the land in the Road is based on the following assumptions:
 - 7.2.1 the Road is valued on a "direct comparison on land value rate", taking into consideration restrictions due to the shape and location of the site, and the



limited width of the site restricts potential redevelopment of the site in isolation without consolidation with adjoining property; and

7.2.2 no discount is applicable to the full land value due to the limited purchasing market for the Road.

8. ENVIRONMENTAL IMPACT

8.1 The Proposal has no identified 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 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 Proposal aligns with the Strategic Direction Well-Governed in the Council Plan 2021-31: A City that is a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

If the Proposal is approved:

11.1.1 a notice will be published in the *Victorian Government Gazette* to formally discontinue the Road; and

11.1.2 a contract of sale for the discontinued Road and 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. Having considered that no submissions were received, Council may now determine whether to discontinue and sell the Road.

11.2.2 The Current Owner will be advised of the final Council decision and the reasons for it within five Business Days of the Council meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

- ATTACHMENTS**
1. [Proposed Title Plan TP965753B](#)
 2. [Locality Plan](#)