



**14.2** PROPOSED DISCONTINUANCE OF ROAD ABUTTING 24  
DUNDAS PLACE ALBERT PARK

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

**PREPARED BY:** EMMA MURDOCH, HEAD OF PROPERTY OPERATIONS

**1. PURPOSE**

1.1 This report seeks Council's approval to consider removing the road abutting 24 Dundas Place, Albert Park (**Road**) from Council's Register of Public Roads if it is no longer reasonably required for general public use and to commence the statutory procedures pursuant to the *Local Government Act 1989 (Vic) (Act)* to discontinue the Road. If the Road is subsequently discontinued, Officers propose that Council sell the Road to the adjoining owner.

**2. EXECUTIVE SUMMARY**

- 2.1 The Road, being R1407, is listed on the Council's Register of Public Roads. The Road is approximately 6 square metres and abuts 24 Dundas Place, Albert Park.
- 2.2 The Road is enclosed within the fenced boundaries of 24 Dundas Place, Albert Park and not available for public use.
- 2.3 The owner of 24 Dundas Place, Albert Park has requested that Council discontinue the Road and sell the Road to them.
- 2.4 Council is now in the position to consider whether or not:
- The Road is reasonably required for general public use;
  - The Road is to be removed from Council's Register of Public Roads; and
  - Statutory procedures are to be commenced to discontinue the Road.
- 2.5 In response to the request, an initial assessment of the Road has been undertaken. This assessment has found that the Road is no longer reasonably required for general public use.
- 2.6 As such, Officers propose that the Road is removed from Council's Register of Public Roads and that the statutory procedures are commenced to discontinue the Road.
- 2.7 If subsequently discontinued, the Road is proposed to be sold to the adjoining owner for market value.
- 2.8 The proposed Road discontinuance and sale has been assessed in accordance with Council's Discontinuance and Sale of Roads Policy (Policy), independent of any related planning permit applications.



### 3. RECOMMENDATION

That Council:

- 3.1 Acting under section 17(4) of the Road Management Act 2004 (Vic), resolves that the road abutting 24 Dundas Place, Albert Park, R1407 (Road) be removed from Council's Register of Public Roads on the basis that the Road is no longer reasonably required for general public use for the reasons set out in the report.
- 3.2 Acting under clause 3 of Schedule 10 of the Local Government Act 1989 (Vic) (Act),
  - a) Resolves that the statutory procedures be commenced to discontinue the Road;
  - b) 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;
  - c) 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 of 24 Dundas Place, Albert Park for its previously assessed market value of \$48,000 plus GST;
  - d) Authorises the Chief Executive 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;
  - e) Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a Council meeting to be determined at a later date;
  - f) Notes that proceeds from the proposed sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio.

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 The Road is shown as lot '1' on the title plan attached as Attachment 1 to this report (Title Plan).
- 4.2 The Road, shown delineated red on the locality plan attached as Attachment 2 (Locality Plan) abuts 24 Dundas Place, Albert Park which is shown delineated green on the Locality Plan.
- 4.3 The Owner of 24 Dundas Place, Albert Park (**Owner**) has requested that Council discontinue the Road and sell the Road to them (**Proposal**).
- 4.4 The Road is currently fenced into the Owner's land and has been fenced in for many years.



- 4.5 The Owner has agreed to pay Council's costs and disbursements associated with the Proposal, together with the market value for the transfer of the discontinued Road to the Owner.

#### **Road**

- 4.6 The Road is known to title as a 'road', as shown on title plan no. TP873873C attached as Attachment 3. The Road is therefore a 'road' for the purposes of the Act. Council has statutory power to consider discontinuing the Road.
- 4.7 The Road is listed on Council's Register of Public Roads.
- 4.8 It is considered that the Road is no longer reasonably required for general public use as the Road is not:
- a) required for public access; and
  - b) open and is not available for general public use.
- 4.9 If the Road is discontinued, the Road will vest in Council.

#### **Consolidation**

- 4.10 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.

#### **Site Inspection**

- 4.11 A site inspection of the Road was conducted by Millar Merrigan Land Development Consultants on 3 October 2018. The site inspection report notes that:
- a) the Road is unconstructed as a road;
  - b) the Road is enclosed within a brick wall at the boundary of the Owner's land;
  - c) access to the Road is only available through the Owner's land; and
  - d) the Road is not open and is not available for public use.
- 4.12 A copy of the site inspection report is attached as Attachment 4 to this report.

### **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:
- Port Phillip City Council;
  - South East Water;
  - Melbourne Water;
  - Multinet;



- Telstra; and
- Optus.

- 5.2 Council Assets Team has advised that Council has no assets in or above the Road and that the team has no objection to the Proposal.
- 5.3 Multinet have advised that they have no assets in or above the Road and no objection to the proposed discontinuance of the Road.
- 5.4 Optus has advised that they have no assets in or above the Road.
- 5.5 Melbourne Water and CitiPower have advised that they have no objection to the proposed discontinuance of the Road.
- 5.6 In a letter dated 7 July 2018, Telstra advised that it has no assets in the near vicinity of 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 in the vicinity of the Road.
- 5.7 In a letter dated 15 August 2018, South East Water advised that there is a sewer main located in the vicinity of the Road. South East Water does not object to the discontinuance of the Road provided that a suitably sized easement is created over the sewer main, in the event that after the discontinuance the sewer falls within the title to the Owner's land. As the sewer main does not fall within the Road, no easement was required in favour of South East Water.

## 6. LEGAL AND RISK IMPLICATIONS

- 6.1 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.
- 6.2 Council has a Policy that enables that roads that are not reasonably required for general public access to be discontinued and sold to the adjoining owner(s), subject to Council approval and statutory requirements.
- 6.3 Council's Policy ensures that roads reasonably required for general public access remain open to the general public and those not reasonably required for general public access may be discontinued and sold. This is assessed independently of any related planning permit applications.

## 7. FINANCIAL IMPACT

- 7.1 The Owner has agreed to 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 Act. This is in accordance with Council's Discontinuance and Sale of Roads policy.
- 7.2 The previously assessed market valuation of the land in the Road is \$8,000 per square metre plus GST. This multiplied by approximately 6 square metres equates to \$48,000 plus GST.



- 7.3 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 road discontinuance and sale is in the best interest of the wider community.
- 9.2 The Proposal 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 to be used to support the acquisition and development of the property portfolio.

**10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 The proposed discontinuance of the Road aligns with the Strategic Direction 6 Our Commitment to You in the Council Plan 2017-27 through supporting:
- a) transparent governance and an actively engaged community; and
  - b) a financially sustainable, high performing, well-governed organisation that puts the community first.
- 10.2 The Proposal is in accordance with Council's Discontinuance and Sale of Road policy.

**11. IMPLEMENTATION STRATEGY**

**11.1 TIMELINE**

- a) Before proceeding with the Proposal, Council must give public notice of the Proposal and invite submissions from interested persons allowing at least 28 days to make a submission in accordance with sections 207A and 223 of the Act. The notice will be published in Port Phillip Leader on 28 August 2019.
- b) 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 the meeting.
- c) After hearing any submissions made, Council must determine whether the Road is reasonably required as a road for general public use, in order to decide whether the Road should be discontinued.



#### 11.2 COMMUNICATION

- a) Council can resolve to commence statutory procedures to discontinue the Road.
- b) A public notice must give details of the Proposal and invite submissions from interested persons allowing at least 28 days to make a submission.
- c) Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.
- d) After submissions have been considered, Council may decide to proceed with the discontinuance and sale of all or any part of the Road or to reject the Proposal in its entirety.
- e) If approved, Council must publish a notice in the Government Gazette and attend to the transfer of the discontinued Road.

#### 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:** 34/14/496-01

**ATTACHMENTS**

1. Attachment 1 - Title Plan
2. Attachment 2 - Locality Plan
3. Attachment 3 - Title Plan no. TP873873C
4. Attachment 4 - Site Inspection Report