



14.3 **PROPOSED DISCONTINUANCE AND SALE OF ROAD
ABUTTING 119 MARKET STREET, SOUTH MELBOURNE**

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

PREPARED BY: **KENTON SHUE, PROPERTY OFFICER**

1. PURPOSE

1.1 This report seeks Council's approval to:

- Consider removing part of the road R3199 abutting 119 Market Street, South Melbourne, being part of the general law land remaining in Crown Grant 3490/1852, and shown as lot 1 on Title Plan 965714M, attached as Attachment 1 to this report (**Road**) from Council's Register of Public Roads; and
- Commence the statutory procedures pursuant to the *Local Government Act 1989* (Vic) (**Act**) to consider discontinuing the road. If the Road is subsequently discontinued, the Road is proposed to be sold to the adjoining owner for market value.

2. EXECUTIVE SUMMARY

2.1 The Road has an area of approximately 54 square metres and abuts 119 Market Street, South Melbourne.

2.2 The Road being part of R3199 is listed on Council's Register of Public Roads.

2.3 The owner of 119 Market Street, South Melbourne, have requested that Council discontinues the Road and sells the Road to them.

2.4 Council is required to consider whether or not to:

- remove the Road from Council's Register of Public Roads; and
- commence the statutory procedure to discontinue the Road.

If the Road is subsequently discontinued, the Road is proposed to be sold to the adjoining owner for market value.



3. RECOMMENDATION

That Council:

- 3.1 That Council acting under section 17(4) of the Road Management Act 2004 (Vic), resolves that the 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 That Council acting in accordance with clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) (**Act**):
 - 3.2.1 resolves to commence the statutory procedures 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;
 - 3.2.3 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 market value; and
 - 3.2.4 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.
 - 3.2.5 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.

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.
- 4.2 The Road, shown highlighted red on the locality plan attached as Attachment 2 (Locality Plan) abuts 119 Market Street, South Melbourne (119 Market Street), shown delineated blue on the Locality Plan.
- 4.3 The Owner of 119 Market Street, South Melbourne (Owner) has requested that Council discontinue the Road and sell the Road to the Owner (Proposal).
- 4.4 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.



Road

- 4.5 The Road is shown as a 'Right of Way' on Crown Grant 3490/1852 registered in the name of John Pinney Bear dated 9 November 1852, 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.
- 4.6 The Road is listed on Council's Register of Public Roads. It is considered that the Road is no longer reasonably required for general public use as the Road is not used by the general public.
- 4.7 If the Road is discontinued, the Road will vest in Council.

Adjoining Owner

- 4.8 The Owner owns the following properties which abut the Road:
- 3 Northumberland Street, South Melbourne (3 Northumberland Street);
 - 80-82 Cecil Street, South Melbourne (80-82 Cecil Street), shown delineated orange on the Locality Plan;
 - 84-92 Cecil Street, South Melbourne; and
 - the former road at 80-94 Cecil Street, South Melbourne.
- 4.9 The Owner's original proposal to Council (Original Proposal) included a request that Council additionally discontinue the section of road abutting the property at 78 Cecil Street, South Melbourne, shown delineated green on the Locality Plan (78 Cecil Street). Council required the Owner to seek the consent of the owners of 78 Cecil Street (Adjoining Owners), to the Original Proposal.
- 4.10 On 4 October 2018, the Adjoining Owners objected in writing to the Original Proposal on the basis that the Original Proposal would:
- restrict access to 78 Cecil Street;
 - affect the architecture of future development of 78 Cecil Street; and
 - devalue 78 Cecil Street by reducing its frontages from three to two.
- 4.11 On 10 October 2018, the Owner, pending its ongoing negotiations with the Adjoining Owners in respect of the Original Proposal, made the Proposal to Council.
- 4.12 On 20 November 2018, Architects acting on behalf of the Adjoining Owners objected in writing to the Proposal, on the basis that:
- the Road is used by vehicles making deliveries to the business at 78 Cecil Street; and
 - any vehicles exiting onto Market Street from a proposed development at 78 Cecil Street would first reverse into the Road.
- 4.13 On 3 December 2018, the Owners contended that the Adjoining Owner's objection should not restrict Council from proceeding with the Proposal, on the basis that:



- the Adjoining Owner's private right of carriageway has been extinguished by the existence of a public right of way over the Road;
- the majority of deliveries to 78 Cecil Street are made from an entrance at Market Street;
- any delivery vehicles entering the laneway have no reason to proceed past the southern boundary of 78 Cecil Street, and enter the Road;
- the Adjoining Owner's development is theoretical and lacks detail.

4.14 On 2 January 2019, Council's Traffic Engineer advised Council that:

- the laneway does not provide vehicular access to other abutting properties;
- the proposed discontinuance would maintain pedestrian access to 78 Cecil Street;
- there are no current planning applications which are affected by the proposed discontinuance; and
- any future development of abutting properties would need to consider latest site conditions in its design.

Consolidation

4.15 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 80-82 Cecil Street within 12 months of the date of transfer of the Road to the Owner, at the Owner's expense.

Site Inspection

4.16 A site inspection of the Road was conducted by Millar Merrigan Land Development Consultants on 5 December 2018. The site inspection report notes that:

- the Road is constructed of bitumen;
- the only evidence of the Road being used is to provide access to car parking at 119 Market Street, which is owned by the Owner;
- the properties at 3 Northumberland Street and 80-82 Cecil Street are both owned by the same Owner, each have roller doors which abut the Road and appear to have been unused for some time;
- all adjacent properties have direct access to the abutting public roads Market Street, Cecil Street, and Northumberland Street; and
- the Road is not required for public access.

A copy of the site inspection report is attached as Attachment 4 to this report.

Public Authorities

4.17 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:

- Council;



- South East Water;
- Melbourne Water;
- CitiPower
- Multinet Gas;
- Telstra; and
- Optus.

4.18 Council and Multinet has advised that they have no assets in or above the Road and no objection to the proposed discontinuance of the Road.

4.19 Optus has advised that they have no assets in or above the Road.

4.20 CitiPower and Melbourne Water have advised that they have no objection to the proposed discontinuance of the Road.

4.21 On 4 October 2018, Telstra advised in writing that it has assets in the near vicinity of 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 to determine the exact location of Telstra assets; and
- in the event that Telstra's assets require relocation, to engage Telstra's Asset Relocation team to obtain a quote to relocate the assets.

4.22 A copy of correspondence from Telstra is attached as Attachment 5 to this report.

4.23 On 29 October 2018, South East Water advised in writing 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.

4.24 A copy of the correspondence from South East Water is attached as Attachment 6 to this report.

5. CONSULTATION AND STAKEHOLDERS

5.1 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 public notice, lodge a written submission regarding the Proposal.

5.2 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 a Special Committee of Council which has delegated authority to hear those submissions, giving reasonable notice of the day, time and place of the meeting.



- 5.3 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.

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.
- 6.2 Council's 'Discontinuance and Sale of Roads Policy', 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). 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 market valuation of the land (discontinued Road) is \$8,000 per square metre plus GST, totalling a purchase price of \$432,000 + GST. The valuation was undertaken on 13 September 2018, which is still current at the date of this report.
- 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 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 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:
- 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.
- 10.1.3 The Proposal is in accordance with Council's Discontinuance and Sale of Road Policy.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 A surveyor will be engaged to prepare a title plan, consolidation plan and gazettal plan for the land.
- 11.1.2 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 5 March 2018.
- 11.1.3 Any submissions received may be heard and considered at a future Council meeting.
- 11.1.4 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.

11.2 COMMUNICATION

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

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:	34/14/204-02
ATTACHMENTS	1. Title Plan
	2. Locality Plan
	3. Crown Grant 3490/1852
	4. Site Inspection Report
	5. Telstra's Response
	6. South East Water's Response