



ORDINARY MEETING OF COUNCIL 5 JUNE 2019

14.1 PROPOSED DISCONTINUANCE AND SALE OF ROAD AT THE REAR OF 225 PAGE STREET, MIDDLE PARK

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

PREPARED BY: KENTON SHUE, PROPERTY OFFICER

1. PURPOSE

This report seeks Council's approval to consider removing the road abutting 225 Page Street, Middle Park (**Road**) from Council's Register of Public Roads if 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, Council proposes to sell the road to the adjoining owner.

2. EXECUTIVE SUMMARY

- 2.1 The Road, being R1931, is listed on Council's Register of Public Roads.
- 2.2 The Road has an area of approximately 9 square metres. It is at the rear of 225 Page Street, Middle Park and abuts the said property.
- 2.3 The Road is unconstructed and unsealed.
- 2.4 The original request to discontinue and sell the Road came from the previous owner of 225 Page Street, Middle Park.
- 2.5 The owner of 227 Page Street, Middle Park recently purchased 225 Page Street, Middle Park.
- 2.6 The proposal to discontinue and sell the Road has now been assumed by the new owner of 225 Page Street, Middle Park.
- 2.7 Council is required to consider whether or not:
 - a) The Road is reasonably required for general public use;
 - b) The Road is to be removed from Council's Register of Public Roads; and
 - c) Statutory procedures are to be commenced to discontinue the Road.
- 2.8 In response to the original request, an initial assessment of the Road has been undertaken. Such assessment has found that the Road is no longer reasonably required for general public use.
- 2.9 If subsequently discontinued, the Road is proposed to be sold to the adjoining new owner for market value.
- 2.10 The proposal 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 at the rear of 225 Page Street, Middle Park, R1931 (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 225 Page Street, Middle Park for its previously assessed market value of \$54,000 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 abuts 225 Page Street, Middle Park shown delineated green on the locality plan attached as Attachment 2 (**Locality Plan**).
- 4.3 The Road, shown delineated red on the Locality Plan, also abuts the following properties at:
 - a) 227 Page Street, Middle Park (**227 Page Street**);
 - b) 1/130 Neville Street, Middle Park (**1/130 Neville Street**); and
 - c) 130 Neville Street, Middle Park (**130 Neville Street**),(together, the **Adjoining Properties**).
- 4.4 The Adjoining Properties are shown delineated blue on the Locality Plan.
- 4.5 The previous owner of 225 Page Street, Middle Park (**Previous Owner**) has initially requested that Council discontinues the Road and sells the Road to them (**Proposal**).
- 4.6 The Previous 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.



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- 4.7 The Previous Owner recently sold 225 Page Street, Middle Park to the owner of 227 Page Street, Middle Park (**New Owner**).
- 4.8 The New Owner has now assumed the Proposal.
- 4.9 The New Owner has signed a new cost agreement to pay Council's costs in relation to the Proposal.
- 4.10 Any surplus funds held in trust by Council's solicitors in relation to the initial Proposal from the Previous Owner were refunded to the Previous Owner.

Road

- 4.11 The Road is shown as a 'road' on title plan no. TP871203M attached as Attachment 3. Council has statutory power to consider discontinuing the Road.
- 4.12 The Road is listed on Council's Register of Public Roads as R1931. It is considered that the Road is no longer reasonably required for general public use as the Road:
 - a) Is not required for general public access; and
 - b) Provides only pedestrian access to the rear of 227 Page Street, Middle Park which has alternative access from Page Street.
- 4.13 If the Road is discontinued, the Road will vest in Council.

Consolidation

- 4.14 If the Road is discontinued and sold to the New Owner, Council will require the New Owner to consolidate the title to the discontinued Road with the title to the New Owner's land within 12 months of the date of transfer of the discontinued Road to the New Owner, at the New Owner's expense.

Site Inspection

- 4.15 A site inspection of the Road was conducted by Millar Merrigan Land Development Consultants on 3 September 2018. The site inspection report notes that:
 - a) The Road is unconstructed;
 - b) There is no encroachment by abutting properties over the Road;
 - c) The Road can be used for pedestrian access to the rear of 227 Page Street, however, access to 227 Page Street is also readily available from Page Street; and
 - d) The Road is not required for general public access.

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

5. CONSULTATION AND STAKEHOLDERS

- 5.1 On 6 September 2017, Council Officers wrote to the owners of the Adjoining Properties to request their written consent to the Proposal.
- 5.2 In an email dated 28 November 2017, the owner of 227 Page Street (New Owner) consented to the Proposal.
- 5.3 Council Officers received an email dated 30 November 2017 on behalf of CitiPower, being the owner of 1/130 Neville Street, consenting to the Proposal, subject to an easement being granted in its favour pursuant to the *Electricity Industry Act 2000* (Vic). It must be also noted that in response to enquiries made by Council solicitors in respect of assets of statutory authorities in the Road, CitiPower did not object to the Proposal contained in their letter dated 24 April 2018.



- 5.4 In an email dated 4 December 2017, the owner of 130 Neville Street consented to the Proposal.
- 5.5 The following statutory authorities have been advised of the Proposal 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;
- South East Water;
 - Melbourne Water;
 - Multinet;
 - CitiPower;
 - Telstra; and
 - Optus.

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.

- 5.6 Optus has advised that it has no assets in or above the Road.
- 5.7 Multinet, CitiPower and Melbourne Water have advised that they have no objection to the Proposal. CitiPower however requires an easement being granted in its favour pursuant to the *Electricity Industry Act 2000 (Vic)*.
- 5.8 In a letter dated 19 March 2018, South East Water advised that it has assets in the Road, and requires a suitably sized sewerage easement in its favour over the existing 100mm sewer main located in the Road.
- 5.9 In a letter dated 23 March 2018, Telstra advised 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.

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 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 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 New 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 Policy.
- 7.2 The previously assessed market valuation of the land in the Road is \$6,000 per square metre plus GST. This multiplied by approximately 9 square metres equates to \$54,000 plus GST.



- 7.3 The New 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 them.

8. ENVIRONMENTAL IMPACT

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 Proposal aligns with the Strategic Direction 6 Our Commitment to You in the Council Plan 2017-27 through supporting:

- a) transparent governance and actively engaged community;
- b) a financially sustainable, high performing, well-governed organisation that puts the community first.

10.2 The Proposal is in accordance with Council's 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 18 June 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.



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- e) If approved, Council must publish a notice in the Government Gazette and attend to transfer of the discontinued Road.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

TRIM FILE NO: 20/13/24

ATTACHMENTS

1. Title Plan
2. Locality Plan
3. TP871203M
4. Site Inspection Report