



14.2 PROPOSED DISCONTINUANCE OF PART OF THE ROAD
PART R2975 BETWEEN 17 COVENTRY PLACE AND 378
COVENTRY STREET, SOUTH MELBOURNE

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER,
OPERATIONS AND INFRASTRUCTURE

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR

1. PURPOSE

1.1 To seek Council's approval to:

- consider removing the road between 17 Coventry Place and 378 Coventry Street, South Melbourne, part R2975 that is part of the land contained in Memorial Book X Number 653 (**Road**), and shown as Lot '1' and Lot '2' on the title plan attached as Attachment 1 to this report (**Title Plan**) from Council's Register of Public Roads if it is no longer required for general public use; 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 owners for market value.

2. EXECUTIVE SUMMARY

- 2.1 Council has previously considered a proposal to discontinue and sell the Road. But at its meeting on 6 September 2017, Council resolved not to proceed with that proposal having considered an objection from the owner of the adjoining property at 376 Coventry Street, South Melbourne (**Adjoining Owner**). The Adjoining Owner now no longer objects to Council discontinuing and selling the Road and has provided consent to the proposal.
- 2.2 The owners of the following properties have requested that Council recommences the statutory procedures to consider discontinuing the Road:
- 2.2.1 378 Coventry Street, South Melbourne, being the land contained in certificate of title volume 5261 folio 107 (**378 Coventry Street**); and
- 2.2.2 17 Coventry Place, South Melbourne, being the land contained in certificate of title volume 8207 folio 179 (**17 Coventry Place**),
(together the **Owners**) and for that Road shown as:
- 2.2.3 Lot '1' on the Title Plan be sold to the owners of 378 Coventry Street; and
- 2.2.4 Lot '2' on the Title Plan be sold to the owners of 17 Coventry Place,
(the **Proposal**).
- 2.3 The Road is approximately 18 square metres and is located between 378 Coventry Street and 17 Coventry Place.
- 2.4 The Road is known to title as a 'road' in the general law search attached to this report as Attachment 2.
- 2.5 The Road is part of laneway R2975 which is listed on Council's Register of Public Roads.



- 2.6 The Road:
- 2.6.1 does not provide vehicular access to any property; and
 - 2.6.2 is not required for public access to the adjoining properties.
- 2.7 Council is now in the position to consider whether to:
- 2.7.1 remove the Road from Council's Register of Public Roads; and
 - 2.7.2 recommence the statutory procedures to discontinue and sell the Road.
- 2.8 If the Road is subsequently discontinued, the Road is proposed to be sold to each of the Owners for market value of \$63,000 plus GST (i.e. \$31,500 plus GST each). In addition, the cost for purchasing the bluestone pitchers within the Road will be borne by the owners of 378 Coventry Street, assessed by Council Asset Management team to be \$800 plus GST.
- 2.9 Officers propose that Council considers removing the Road 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, and that Council considers recommending the statutory procedures to discontinue the Road.
- 2.10 Proceeds from the proposed discontinuance and sale of the Road will go into Council's strategic Property reserves to be used to support the acquisition and development of the property portfolio.

3. RECOMMENDATION

That Council:

- 3.1 Acting under section 17(4) of the *Road Management Act 2004* (Vic), resolves that the road between 17 Coventry Place and 378 Coventry Street, South Melbourne, part of R2975 that is part of the land contained in Memorial Book X Number 653 (**Road**), and shown as Lot '1' and Lot '2' on the title plan attached as Attachment 1 to this report (**Title Plan**), 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**):
- 3.2.1 resolves that the statutory procedures be commenced to discontinue the Road;
 - 3.2.2 directs that under sections 207A and 223 of the Act public notice of the proposed discontinuance and sale of the Road be given in The Age 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, for market value, that part of the Road shown as:
 - Lot '1' on the on the Title Plan to the owners of 378 Coventry Street, South Melbourne; and
 - Lot '2' on the Title Plan to the owners of 17 Coventry Place, South Melbourne.
 - 3.2.4 notes that the market value of the Road was previously assessed at \$63,000 plus GST (i.e. \$31,500 plus GST each adjoining owner);



- 3.2.5 notes that the owners of 378 Coventry Street, South Melbourne have agreed to purchasing the bluestone pitchers within the Road assessed by Council Asset Management Team to be \$800 plus GST;
- 3.2.6 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;
- 3.2.7 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; and
- 3.2.8 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 As part of the road network, rights of way and laneways were developed to satisfy a historical need and were documented in early plans of subdivision.
- 4.2 In most cases this land is still required for access or other strategic purposes and should remain open to the public however, Council may support the discontinuance (permanent closure) of a road within its municipality if it is considered in the best interest of the community.
- 4.3 Unless the subject road is on Crown land, the land vests in Council and Council can subsequently sell the land from the discontinued road or retain it for municipal purposes.
- 4.4 If the land is subsequently sold, it will be done at the current market value for the land in that location unless exceptional circumstances deem a discounted price appropriate.
- 4.5 Any discontinuance and sale of a road is to be carried out according to the provisions of Clause 3 of Schedule 10 of the Local Government Act 1989 and *Council's Discontinuance and Sale of Roads Policy (Policy)*.
- 4.6 It should be noted that Council's Discontinuance and Sale of Roads Policy was developed in 2011. A comprehensive review of the policy is scheduled for 2021, along with the processes and procedures that support implementation of the policy.
- 4.7 Council has previously considered a proposal to discontinue and sell the Road. But at its meeting on 6 September 2017, Council resolved not to proceed with that proposal having considered an objection from the owner of the adjoining property at 376 Coventry Street, South Melbourne (**Adjoining Owner**). The Adjoining Owner now no longer objects to Council discontinuing and selling the Road and has provided consent to the proposal.
- 4.8 The owners of the following properties have requested that Council recommences the statutory procedures to consider discontinuing the Road:
 - 4.8.1 378 Coventry Street, South Melbourne, being the land contained in certificate of title volume 5261 folio 107 (**378 Coventry Street**); and
 - 4.8.2 17 Coventry Place, South Melbourne, being the land contained in certificate of title volume 8207 folio 179 (**17 Coventry Place**),



(together the **Owners**) and for that Road shown as:

4.8.3 Lot '1' on the Title Plan be sold to the owners of 378 Coventry Street; and

4.8.4 Lot '2' on the Title Plan be sold to the owners of 17 Coventry Place,
(the **Proposal**).

Road

4.9 The Road is shown delineated red on the locality plan attached as Attachment 2 (**Locality Plan**) and abuts:

4.9.1 378 Coventry Street, shown delineated green on the Locality Plan; and

4.9.2 17 Coventry Place, shown delineated blue on the Locality Plan.

4.10 The Road is approximately 18 square metres and is located between 378 Coventry Street and 17 Coventry Place.

4.11 The Road is known to title as a 'road' in the general law search attached to this report as Attachment 2.

4.12 The Road is:

- shown as a 'road', registered in the name of the original subdivider in the general law search attached to this report as Attachment 3; and
- constructed as a road.

4.13 The Road is therefore a 'road' for the purposes

4.14 The Road is part of laneway R2975 which is listed on Council's Register of Public Roads.

4.15 Council has statutory power to consider discontinuing the Road.

4.16 If the Road is discontinued, the Road will vest in Council.

4.17 A site inspection of the Road was conducted by Kirkpatrick & Webber on 4 September 2016. The site inspection report notes that:

- the Road is open and available for use by pedestrian traffic, however, there is no evidence that the Road is used for public purposes;
- the Road is constructed of bluestone;
- the Road does not provide vehicular access to any property; and
- the Road is not required for public access.

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

4.19 The Road is made up of bluestone pitchers which Council's Asset Management Team confirmed to be currently worth a total of \$800 plus GST for the blocks contained within the Road.

4.20 Any material in the road proposed to be discontinued of value to Council must be purchased by the purchaser at time of sale at the current market value of such materials under Council's Policy. The Owners may either purchase the bluestone pitchers within the Road at market value or reimburse Council's costs incurred in removing the bluestone pitchers from the Road.



Adjoining owner

- 4.21 In September 2017, Council received an objection from the owner of the adjoining property at 376 Coventry Street, South Melbourne (**Adjoining Owner**).
- 4.22 The Adjoining Owner now no longer objects to Council discontinuing and selling the Road and has provided consent to the proposal.
- 4.23 If Council resolves to commence the statutory procedures to discontinue the Road, Council will provide the owner of the Adjoining Property with a copy of the public notice published in The Age newspaper.

Application

- 4.24 The Owners have agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value of the respective portions of the discontinued Road if transferred to the Owners.

Analysis

- 4.25 It is considered that the Road is no longer reasonably required for general public use as:
- there is no evidence that the Road is used for public purposes;
 - the Road is not required for public access.
 - does not provide vehicular access to any property; and
 - is not required for public access to the adjoining properties.
- 4.26 Given the small size of the Land, it is not considered a development site in its own right and would need to be consolidated into an accompanying parcel to have development value.
- 4.27 Similarly, the Land is not considered an ideal area for public open space due to its size and location.
- 4.28 The Proposal has been referred internally within Council and no objections have been received. This highlights that the Road is deemed to have no strategic purpose for Council.
- 4.29 The proposed discontinuance and sale of the Road will enable the land in the Road to be re-purposed with any proceeds from the sale going into Council's Strategic Property Reserves to be used to support the acquisition and development of the property portfolio.
- 4.30 If the Road is discontinued and sold to the Owners, Council will require the Owners to consolidate the titles to the discontinued Road with the titles to their respective abutting properties within 12 months of the date of transfer of the Road to the Owners, at the Owners' expense.
- 4.31 Council is now in the position to consider whether to:
- 4.31.1 remove the Road from Council's Register of Public Roads; and
 - 4.31.2 recommence the statutory procedures to discontinue and sell the Road.
- 4.32 If the Road is subsequently discontinued, the Road is proposed to be sold to each of the Owners for market value currently valued at \$63,000 plus GST (i.e. \$31,500 plus GST each). In addition, the cost for purchasing the bluestone pitchers within the Road



will be borne by the owners of 378 Coventry Street, assessed by Council Asset Management team to be \$800 plus GST.

- 4.33 Officers propose that Council considers removing the Road 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, and that Council considers recommending the statutory procedures to discontinue the Road.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 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:

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

- 5.2 Council Asset Management team has advised it has no objection to the Proposal, provided that the Owners, in accordance with the Council's Discontinuance and Sale of Roads Policy (**Policy**), either:

5.2.1 purchase the bluestone pitchers within the Road at market value assessed at \$800 plus GST or;

5.2.2 reimburse Council's costs incurred in removing the bluestone pitchers from the Road.

- 5.3 The owners of 378 Coventry Street have agreed to purchasing the bluestone pitchers within the Road for \$800 plus GST.

- 5.4 Other relevant internal Council teams have been consulted and no one has objected to the Proposal.

- 5.5 Melbourne Water, CitiPower, Telstra and Optus have advised that they have no assets in or above the Road and no objection to the Proposal.

- 5.6 South East Water has advised that it has assets in the Road and requires a suitably sized easement in its favour over the existing 100mm sewer main located in the Road.

- 5.7 Comdain has advised that Multinet Gas has assets in the Road and requires a suitably sized easement in favour of Multinet Gas over the existing low-pressure polyethylene mains located in the Road.

- 5.8 An easement pursuant to section 207C of the Act, shown marked 'E-1' on the Title Plan, is to be recorded over the whole of the Road in favour of South East Water and Multinet Gas.



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 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 Owners have agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value (plus GST) for the transfer of the discontinued Road to the Owner.
- 7.2 The market valuation of the land in the Road undertaken in November 2019 is \$3,500 per square metre plus GST. This multiplied by 18 square metres totals a purchase price of \$63,000 plus GST.
- 7.3 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.
- 7.4 Under section 189 of the Local Government Act 1989 (Vic) (LGA), Council must obtain a valuation of land within 6 months prior to Council's sale of that land. The LGA does not require Council to sell the land at that value, but the Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land dated June 2009 provides that Council should not sell the land at less than market value. Accordingly, Council is not precluded from selling the Road at the valuation it sought in 2019.
- 7.5 In accordance with Council's Policy and previous sales of roads, the value attributed to the land in the Road is based on the following assumptions:
 - full value of the land is applicable to the Road as though it is consolidated with the Owners' respective properties;
 - no discount is applicable to the full land value due to the limited purchasing market of the Road;
 - the Road is not valued on the "before and after" method but is instead based on the "street land value rate" of the consolidated site assuming the Road is consolidated with the Owners' respective properties.
- 7.6 The Road is made up of bluestone pitchers which Council Asset Management team confirmed to be currently worth a total of \$800 plus GST for the blocks contained within the Road.
- 7.7 The owners of 378 Coventry Street have agreed to purchasing the bluestone pitchers for \$800 plus GST.

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 used to support the acquisition and development of the property portfolio.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The proposed discontinuance and sale of the Road aligns with 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.
- 10.2 It is in accordance with Council's Policy.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 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 The Age newspaper.
- 11.1.2 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 the Committee which has delegated authority to hear those submissions, giving reasonable notice of the day, time and place of the meeting.
- 11.1.3 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.

11.2 COMMUNICATION

- 11.2.1 Council can resolve to commence statutory procedures to discontinue the Road.
- 11.2.2 A public notice must give details of the Proposal and invite submissions from interested persons allowing at least 28 days to make a submission.
- 11.2.3 Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.
- 11.2.4 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.
- 11.2.5 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.



MEETING OF THE PORT PHILLIP CITY COUNCIL 18 NOVEMBER 2020

TRIM FILE NO:

20/13/35

ATTACHMENTS

- 1. Title Plan**
- 2. Locality Plan**
- 3. General Law Search of the Road**
- 4. Site Inspection Report**