



14.5 PROPOSED DISCONTINUANCE OF ROADS - PART
FERRARS STREET, PART GLADSTONE STREET AND PART
KERR STREET, SOUTH MELBOURNE

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

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR

1. PURPOSE

1.1 To consider whether the government roads, known as:

- a) **part Ferrars Street** (between Douglas Street and Gladstone Street);
- b) **part Gladstone Street** (between Kerr Street and Ferrars Street); and
- c) **part Kerr Street,**

shown coloured blue on the Plan of Crown Allotment contained in Attachment 1 to this report (together, the **Roads**), should be discontinued pursuant to Clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) (**Act**).

1.2 If the Roads are discontinued, these roads will revert to unreserved Crown land status vested in the Minister for Energy, Environment and Climate Change (**DELWP Minister**) having responsibility for the Department of Environment, Land, Water and Planning (**DELWP**). The DELWP Minister proposes to temporarily reserve these former Roads for public park and recreation purposes and appoint Council as the Committee of Management under section 14 of the *Crown Land (Reserves) Act 1978* of the former Roads.

2. EXECUTIVE SUMMARY

2.1 A Land Use Deed (**Deed**) for the site at 2-4 Buckhurst Street, South Melbourne (**Site**) was entered into by the Minister for Planning (**Planning Minister**), for and on behalf of the Crown, and Council in December 2015. The Site comprises:

- a) the Roads;
- b) the Planning Minister's land, being the reserved Crown land contained in Crown Allotment 2392, City of South Melbourne, Parish of South Melbourne, shown green on the Plan of Crown Allotment contained in Attachment 1 to this report (**Planning Minister's Land**); and
- c) the Council's land, being the land contained in certificate of title volume 9789 folio 027, shown coloured yellow on the Plan of Crown Allotment contained in Attachment 1 to this report (**Council's Land**).

2.2 Council has been appointed as the Committee of Management of the Planning Minister's Land.

2.3 Under the Deed, it was agreed that the Site is to be used as Public Open Space in perpetuity.



- 2.4 In December 2017, Council physically closed the Roads pursuant to clause 9 of Schedule 11 of the Act, following a lengthy public consultation process. This was aimed at facilitating delivery of the Montague Community Park and Streetscape Works (as previously endorsed by Council) and to support the new school by providing a safe access and pedestrian friendly environment.
- 2.5 The adjoining Kirrip Park, comprising Council's Land and the Planning Minister's Land, was formally opened in October 2018.
- 2.6 Following the opening of Kirrip Park, Council must now consider whether to discontinue the Roads so that it may incorporate the Roads with Council's Land and the Planning Minister's Land to be used as Public Open Space in perpetuity.
- 2.7 As these Roads were previously closed via a road closure process, the Roads have not been used by the public since the closure. It is therefore considered that the Roads are no longer reasonably required for general public use.
- 2.8 At its meeting on 16 October 2019, Council resolved to remove the Roads from Council's Register of Public Roads on the basis that the Roads are no longer reasonably required for general public use.
- 2.9 Council has notified the community of the proposed discontinuance of the Roads through a public notice in the Port Phillip Leader newspaper on 29 October 2019, inviting submissions in accordance with section 223 of the Act, with a deadline for submissions of 26 November 2019.
- 2.10 No submissions were received by Council in response to the public notice.
- 2.11 Council is now in a position to consider whether or not to discontinue the Roads.

3. RECOMMENDATION

That Council, having noted that no submissions were received in response to the public notice regarding Council's proposal to discontinue the government roads, known as part Ferrars Street (between Douglas Street and Gladstone Street), part Gladstone Street (between Kerr Street and Ferrars Street) and part Kerr Street, shown coloured blue on the Plan of Crown Allotment contained in Schedule 1 to this report (together, the **Roads**):

- 3.1 resolves to discontinue the Roads as it considers that the Roads are not reasonably required for general public use; and
- 3.2 directs that a notice pursuant to clause 3(a) of Schedule 10 of the *Local Government Act 1989 (Vic)* (**Act**) is published in the *Victoria Government Gazette* to reflect the resolution described in clause 3.1 above.

4. KEY POINTS/ISSUES

Kirrip Park – Road Closures

- 4.1 On 22 December 2015, the Planning Minister and Council entered the Deed for the Site.

- 4.2 Under this Deed, the parties agreed that they would facilitate:
- 4.2.1 the consolidation of the Planning Minister's Land and the Roads (if the Roads are discontinued);
 - 4.2.2 the application of a temporary reservation of the Planning Minister's land and the Roads for public park and recreation purposes;
 - 4.2.3 the appointment of Council as Committee of Management for the Planning Minister's Land and the Roads; and
 - 4.2.4 the development of the Site as Public Open Space.
- 4.3 Subject to compliance with the relevant statutory process, the Planning Minister and Council respectively covenanted with each other that:
- 4.3.1 the Council's Land is to be used as Public Open Space in perpetuity; and
 - 4.3.2 the Planning Minister's Land and the Roads are both to be used as Public Open Space in perpetuity.
- 4.4 To this end, in December 2017, Council closed the Roads pursuant to clause 9 of Schedule 11 of the Act, following a lengthy public consultation process.
- 4.5 On 20 October 2018, the adjoining Kirrip Park was formally opened.
- 4.6 The extent of the road closure is shown by comparing the aerial photographs before and after the construction of the park. See Figures 1 and 2 below showing the before and after image of the park.



Figure 1 – Aerial Photograph – Before Image



Figure 2 – Aerial Photograph – After Image

Kirrip Park – Discontinuance of Roads and Appointment of Council as Committee of Management

4.7 Following the opening of Kirrip Park, Council is now proposing the discontinuance of the Roads so that these Roads can be used as Public Open Space in perpetuity as per the Deed. The broader process to facilitate the handover of the Planning Minister’s Land and Roads to Council as Committee of Management is as follows:

1. Survey the Roads and document that survey as a Plan of Crown Allotment; the boundaries of the Roads parcel to be confirmed by Council	Completed	Plan of Crown Allotment attached to this report
2. Complete Gazettal Plan consistent with the Plan of Crown Allotment that can be used by Council to discontinue those portions of Gladstone Street, Ferrars Street and Kerr Street under Clause 3 of Schedule 10 of the Act	Completed	Gazettal Plan now complete
3. Notify the statutory authorities of the proposed discontinuance of Roads	Completed	Responses received and noted in paragraph 5.1 of this report
4. Council to consider first report and determine whether to remove the Roads from Council’s register of public roads and whether to commence the statutory procedure to consider the discontinuance of the Roads	Completed	Council resolved to proceed at its meeting on 16 October 2019
5. Provide public notice of the proposed discontinuance of Roads under section 223 of the Act	Completed	The public notice was published on 29 October 2019



6. Council to consider submissions made (if any) under section 223 of the Act	Completed	No submissions received
7. Council to consider second report and determine whether or not to discontinue the Roads	Underway	This report addresses this point
8. Gazettal of road discontinuance	Not started	Once discontinued, the former Roads will revert to unreserved Crown land status
9. Council to notify the Surveyor-General Victoria of the completion of the gazettal of the discontinuance of the Roads, at which time the Plan of Crown Allotment referred to in item 1 above can be certified	Not started	
10. The certified Plan of Crown Allotment can then be used to reserve the Roads for public park and recreation purposes using section 4(1) of the <i>Crown Land (Reserves) Act 1978</i>	Not Started	DELWP to facilitate this

4.8 It must be noted that the Planning Minister's Land has already been surrendered and reserved fulfilling Clause 5 of the Deed, and is temporarily reserved for public recreation pursuant to section 5(7) of the *Crown Land (Reserves) Act 1978*.

4.9 If the Roads are discontinued, the Roads will need to be reserved separately to the Planning Minister's Land. Accordingly, the Planning Minister's Land and the Roads cannot be shown on a Plan of Crown Allotment as a consolidated 'Reserve' parcel as indicated in clause 8.1(c) of the Deed. This has no practical consequence, because if the Roads are reserved they can be used in conjunction with the Planning Minister's Land for the purpose of the park and Council will be appointed as the Committee of Management for both.

5. CONSULTATION AND STAKEHOLDERS

5.1 Public Authorities

5.1.1 The following authorities have been advised of the proposed discontinuance of the Roads and have been asked to respond to the question of whether they have any existing assets in the Roads:

- Council;
- South East Water;
- Melbourne Water;
- CitiPower;
- Multinet;



- AusNet Electricity Services;
 - Australian Gas Networks;
 - United Energy;
 - NBN;
 - APA;
 - Telstra; and
 - Optus.
- 5.1.2 Relevant departments at Council facilitated the previous closure of the Roads and thus have no objection to the proposed discontinuance of the Roads.
- 5.1.3 South East Water advised it has no objection to the proposed discontinuance of the Roads on the following conditions:
- a suitably sized water easement is created over the existing 150mm water main located in the Roads; and
 - a sewerage easement is created over the existing 225, 150 and 100 mm sewer mains located within the Roads.
- 5.1.4 CitiPower advised it has assets in the Roads and requires the assets be relocated or easements be granted.
- 5.1.5 Optus advised it has an aerial cable within the Roads.
- 5.1.6 Telstra advised it has assets in the vicinity of the Roads but has no objection to the proposed discontinuance of the Roads.
- 5.1.7 In response to a 'Dial Before You Dig' application, NBN advised it has communication assets within the Roads.
- 5.1.8 Melbourne Water, Multinet and AusNet Electricity Services advised they have no objection to the proposed discontinuance of the Roads.
- 5.1.9 Australian Gas Networks, United Energy and APA advised they do not service the relevant area.
- 5.1.10 As the Roads are Crown land, easements cannot be created over the Roads in favour of any authority in respect of any existing assets located within the Roads. Accordingly, Council notes the responses received from the relevant statutory authorities, and will consider the assets located within, or in the vicinity of the Roads when carrying out works.

5.2 Public Notice

Council has notified the community of the proposed discontinuance of the Roads through a public notice in the Port Phillip Leader newspaper on 29 October 2019,



inviting submissions in accordance with section 223 of the Act, with a deadline for submissions of 26 November 2019.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Under Clause 3 of Schedule 10 of the Act, Council has the power to discontinue government roads located within its municipality. Once discontinued, the land comprising the former government roads will vest in the Crown.
- 6.2 Council is acting in accordance with the Deed.
- 6.3 Council has a Discontinuance and Sale of Roads Policy (**Policy**) that enables roads that are no longer reasonably required for general public access to be discontinued and sold to the adjoining owner(s). If the Roads are discontinued, Council will not have the ability to sell the land as the land will vest in the Crown.

7. FINANCIAL IMPACT

- 7.1 The proposed discontinuance of the Roads has no detrimental financial implications.

8. ENVIRONMENTAL IMPACT

- 8.1 The proposed discontinuance of the Roads has no detrimental environmental implications.

9. COMMUNITY IMPACT

- 9.1 Council will facilitate the discontinuance of roads where appropriate consultation has occurred, legislative requirements have been met and it is considered that the road discontinuance is in the best interest of the wider community.
- 9.2 The Planning Minister and Council are working together to facilitate the provision of Public Open Space in the Montague precinct of Fishermans Bend. The Roads proposed to be discontinued will be absorbed into Kirrip Park and used as Public Open Space for public park and public recreation purposes.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The proposed discontinuance of the Roads aligns with the Strategic Direction 6 'Our Commitment to You' in the Council Plan 2017-27 through supporting:
 - 10.1.1 transparent governance 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 also in accordance with Council's Policy.

11. IMPLEMENTATION STRATEGY

- 11.1 TIMELINE

ORDINARY MEETING OF COUNCIL 19 FEBRUARY 2020



11.1.1 As no submissions were received in response to Council's public notice, Council may resolve to proceed with the discontinuance of the Roads or reject the proposal in its entirety.

11.1.2 If the Roads are discontinued, Council must publish a notice in the *Victoria Government Gazette* with these former Roads to revert to unreserved Crown land status.

11.2 COMMUNICATION

11.2.1 If the Roads are discontinued, Council must publish a notice in the *Victoria Government Gazette* to effect the discontinuance and revert the former Roads to unreserved Crown land status.

11.2.2 Council will notify the Surveyor-General Victoria of the completion of the gazettal of the discontinuance of the Roads, at which time the Plan of Allotment can be certified.

11.2.3 DELWP will then use the certified Plan of Crown Allotment for the purpose of facilitating the process of reserving the Roads for public park and recreation using section 4(1) of the *Crown Land (Reserves) Act 1978*.

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.

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ATTACHMENTS 1. Plan of Crown Allotment