



13.5 PROPOSED DISCONTINUANCE OF ROAD AT REAR OF 3, 5, 7, 9-11 AND 15 FITZROY STREET, ST KILDA

EXECUTIVE MEMBER: LACHLAN JOHNSON, GENERAL MANAGER, OPERATIONS AND INFRASTRUCTURE

PREPARED BY: ANTHONY SAVENKOV, ACTING MANAGER PROPERTY AND ASSETS

BRIDGETTE KENNEDY, TEAM LEADER PROPERTY OPERATIONS

1. PURPOSE

1.1 To seek Council's approval to:

1.1.1 Remove the road adjoining the rear of 3-5, 7 and 9 and 15 Fitzroy Street, St Kilda, being the land contained certificate of title volume 2591 folio 074 and the land described as Road R1 on plan of subdivision LP29616, and being part of the laneway known as R3571 (**Road**) from Council's Register of Public Roads pursuant to section 17(4) of the *Road Management Act 2004* (Vic) (**RMA**); and

1.1.2 Commence the statutory procedures pursuant to the Local Government Act 1989 (Vic) (Act) to consider discontinuing the Road. If the Road is subsequently discontinued, they are proposed to be sold to the adjoining owner for market value.

2. EXECUTIVE SUMMARY

2.1 The owner of 3-5, 7, 9 and 15 Fitzroy Street, St Kilda (**Owner**) has requested that Council discontinues and sells the Road to them (**Proposal**).

2.2 The Road is approximately 5 square metres in total area and adjoins the rear of 3-5, 7 and 9 Fitzroy Street, St Kilda.

2.3 The Road is listed on Council's Register of Public Roads, also known as part R3571.

2.4 It is considered that the Road is no longer reasonably required for general public use as it:

2.4.1 is part of a laneway which is partially enclosed between the walls and fences of the adjoining properties, and only accessible on the southern boundary;

2.4.2 is only open to the general public for pedestrian access to the rear of the adjoining properties at 3-5 and 7 Fitzroy Street;

2.4.3 is not open to the general public for vehicular access; and

2.4.4 does not form part of a thoroughfare for pedestrian or vehicular traffic to any other public road.

2.5 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value, which was assessed at \$30,000 plus GST, for the transfer of the discontinued Road to the Owner.

2.6 Council is now able to consider whether to:

2.6.1 remove the Road from Council's Register of Public Roads; and

2.6.2 commence the statutory procedure to discontinue and sell the Road.



- 2.7 Officers propose that Council removes 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 subject to this, Council commences the statutory procedures to discontinue the Road.
- 2.8 Proceeds from the proposed discontinuance and sale of the Roads 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 adjoining the rear of 3-5, 7 and 9 and 15 Fitzroy Street, St Kilda, being the land contained certificate of title volume 2591 folio 074 and the land described as Road R1 on plan of subdivision LP29616, and being part of the laneway known as R3571 (**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**):
- 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 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 the Road to the adjoining owner of 3-5, 7, 9 and 15 Fitzroy Street, St Kilda, for market value;
- 3.2.4 notes that the current market value of the Road is currently assessed to be \$30,000 plus GST;
- 3.2.5 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;
- 3.2.6 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
- 3.2.7 resolves to hear and consider any submissions received pursuant to section 223 of the Act at a Council meeting to be determined later.

4. KEY POINTS/ISSUES

Background

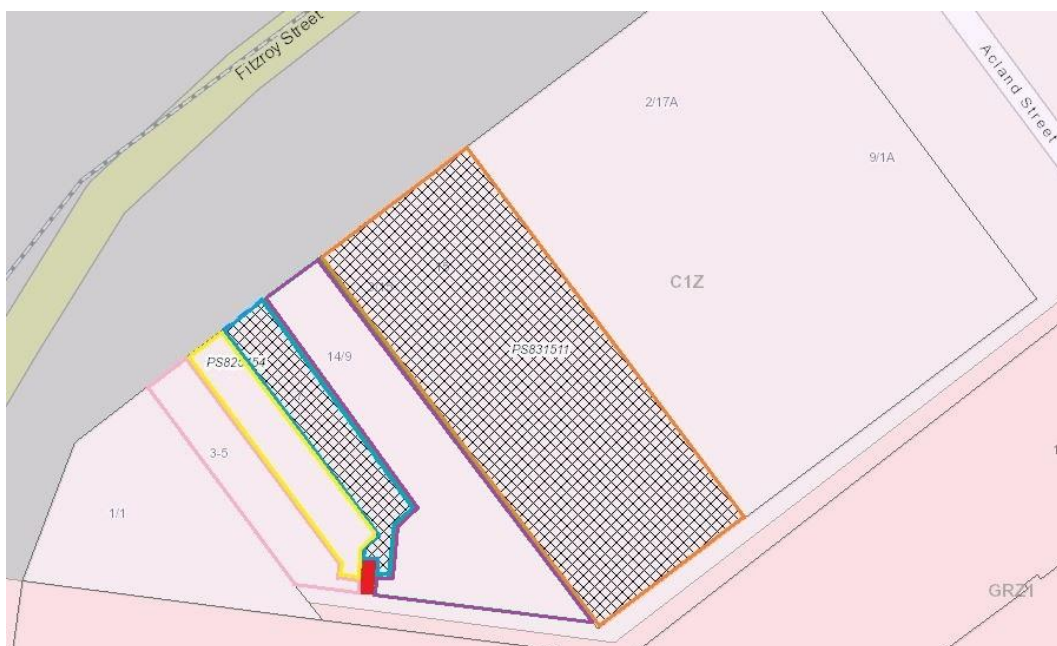
- 4.1 As part of the road network, rights of way and laneways were developed to satisfy a historical need and were documented in early plans of subdivision.
- 4.2 In most cases a road is still required for access or other strategic purposes and should remain open to the public, however, Council may support 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 is generally sold at current market value for 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 Act and Council's Discontinuance and Sale of Roads Policy (**Policy**).
- 4.6 The owner of 3-5, 7, 9 and 15 Fitzroy Street, St Kilda (**Owner**) have requested that Council discontinues and sells the Road to them (**Proposal**).

Road

- 4.7 The Road is shown delineated red on the locality plan attached as Attachment 1 (**Locality Plan**) and shown below:





- 4.8 The Road adjoins the rear of the following properties, all of which are registered in the name of the Owner (**Owner's Properties**):
- 4.8.1 3-5 Fitzroy Street, St Kilda, being the land contained in certificates of title 8198 folio 555 and volume 8500 folio 030 and shown delineated pink and yellow respectively on the Locality Plan;
 - 4.8.2 7 Fitzroy Street, St Kilda, being the land contained in certificate of title volume 8198 folio 557 and shown delineated blue on the Locality Plan;
 - 4.8.3 9 Fitzroy Street, St Kilda, being the land contained in certificate of title volume 8198 folio 556 and shown delineated purple on the Locality Plan; and
 - 4.8.4 15 Fitzroy Street, St Kilda, being the land contained in certificate of title volume 7734 folio 161 and shown delineated orange on the Locality Plan.
- 4.9 The title to the Road is contained in certificate of title volume 2591 folio 074, being Road R1 on plan of subdivision LP26916.
- 4.10 The Road is listed on Council's Register of Public Roads, also known as part R3571.
- 4.11 Council has statutory power to consider discontinuing the Road.
- 4.12 If the Road is discontinued, the Road will vest in Council (section 207B of the Act).

Adjoining Properties

- 4.13 All of the properties which directly adjoin the Road are the Owner's Properties.
- 4.14 The only other property located near the Road (but does not directly adjoin the Road) is 1 Fitzroy Street, St Kilda (**1 Fitzroy Street**), which is not one of the Owner's Properties.
- 4.15 The consent of the owner of 1 Fitzroy Street is not considered required, as:
 - 4.15.1 the Road does not abut or adjoin 1 Fitzroy Street;



4.15.2 1 Fitzroy Street does not have any legal abuttal on title or any right of carriageway over the Road; and

4.15.3 the Road is not required for access to any part of 1 Fitzroy Street.

Application

4.16 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.

4.17 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 Property within 12 months of the date of transfer of the Road to the Owner, at the Owner's expense.

Analysis

4.18 It is considered that the Road is no longer reasonably required for general public use as the Road:

4.18.1 is not sufficiently wide to permit vehicular access;

4.18.2 is not constructed as a road;

4.18.3 permits pedestrian traffic, but would likely only be used for rear access to any of the Owner's Properties; and

4.18.4 does not form part of a thoroughfare for pedestrian or vehicular traffic to any other public road.

4.19 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.

4.20 The proposed discontinuance and sale of the Road will enable the land in the Road to be re-purposed with proceeds from the sale going into Council's Strategic Property Reserves to be used to support the acquisition and development of the property portfolio.

4.21 Council is now in a position to consider whether to:

4.21.1 remove the Road from Council's Register of Public Roads; and

4.21.2 commence the statutory procedure to discontinue and sell the Road.

4.22 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 above, and that Council considers commencing the statutory procedures to discontinue the Road.

4.23 If the Road is subsequently discontinued, the Road is proposed to be sold to the Owner at market value which is currently of \$30,000 plus GST.

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:

5.1.1 Port Phillip City Council;



- 5.1.2 CitiPower;
- 5.1.3 Powercor;
- 5.1.4 Multinet Gas;
- 5.1.5 South East Water;
- 5.1.6 Melbourne Water; and
- 5.1.7 Telstra Corporation.

- 5.2 Powercor, on behalf of CitiPower, has advised that it has no existing assets in or above the Road, and has no objections to the Proposal.
- 5.3 As at the date that this report was prepared, no other authorities have yet responded to the request for response.
- 5.4 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 of the public notice, lodge a written submission regarding the Proposal.
- 5.5 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.
- 5.6 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 Road Policy (**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 Policy.
- 7.2 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.
- 7.3 The market valuation of the land in the Road is \$6,000 per square metre plus GST totalling a purchase price of \$30,000 plus GST (rounded off by Council's appointed valuers). The valuation was undertaken on 4 December 2022 and an updated valuation will be sought by Council prior to any transfer. In accordance with the Policy and previous sales of roads, the value attributed to the land in the Road is based on the following assumptions:
 - 7.3.1 the Road is valued on a "direct comparison on land value rate", taking into consideration restrictions due to the shape and location of the site, and the



limited width of the site restricts potential redevelopment of the site in isolation without consolidation with adjoining property; and

- 7.4 no discount is applicable to the full land value due to the limited purchasing market for the Road.

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 Proposal aligns with the Strategic Direction Well-Governed in the Council Plan 2021-31: A City that is a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

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 Any submissions received may be heard and considered at a future Council 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.

MEETING OF THE PORT PHILLIP CITY COUNCIL 16 AUGUST 2023



11.2.5 If approved, Council must publish a notice in the Victoria 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 material or general interest in the matter.

ATTACHMENTS 1. **Locality Plan Fitzroy Street** [↓](#)