



14.3 **PROPOSED DISCONTINUANCE AND SALE OF ROAD
ABUTTING 119-125 MARKET 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 road abutting 119-125 Market Street, South Melbourne, being the general law land remaining in Crown Grant 3490/1852 and shown as lot '1' on Title Plan No. TP965714M, attached as Attachment 1 to this report (**Road**), should be discontinued pursuant to the *Local Government Act 1989* (Vic) (**Act**) and sold to the owner of 119-125 Market Street, South Melbourne (**119-125 Market Street**).

2. EXECUTIVE SUMMARY

- 2.1 The Road is approximately 92 square metres in area and abuts 119-125 Market Street.
- 2.2 The owner of 119-125 Market Street (**Owner**) has requested that Council discontinues the Road and sells the Road to them.
- 2.3 At its meeting on 16 October 2019, Council resolved to:
- 2.3.1 remove the Road from Council's Register of Public Roads; and
 - 2.3.2 commence the statutory procedures and give notice pursuant to sections 207A and 223 of the Act of its intention to discontinue and sell the Road to the Owner.
- 2.4 Council did not receive any submissions in response to the public notice.
- 2.5 Council is now in a position to consider whether to discontinue and sell the Road to the Owner.

3. RECOMMENDATION

That Council, having considered that there were no submissions in response to the public notice regarding Council's proposal to discontinue the road shown marked lot '1' on the Title Plan No. TP965714M attached as Attachment 1 to this report (**Road**), being the general law land remaining in Crown Grant 3490/1852:

- 3.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use for the reasons set out in this report;
- 3.2 resolves to sell the discontinued Road, for the market value of \$736,000 plus GST, to the owner of 119-125 Market Street, South Melbourne (**119-125 Market Street**);
- 3.3 notes that proceeds from the sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio;



- 3.4 notes that the owner of 119-125 Market Street has agreed to pay Council's costs associated with the removal of the bluestone pitchers from the Road;
- 3.5 directs that a notice pursuant to clause 3 of Schedule 10 of the *Local Government Act 1989* (Vic) is published in the *Victoria Government Gazette*;
- 3.6 directs that the Chief Executive Officer or delegate signs an authorisation allowing Council's solicitors to execute transfer documents and any other documents required to be signed on Council's behalf in connection with the transfer of the discontinued Road to the owner of 119-125 Market Street; and
- 3.7 directs that the owner of 119-125 Market Street be required to consolidate the title to the Road with the title to the adjoining property of the owner within 12 months of the date of transfer of the discontinued Road.

4. KEY POINTS/ISSUES

Background

- 4.1 The Road, shown as the areas highlighted in red and purple on the locality plan attached as Attachment 2 (**Locality Plan**) abuts 119-125 Market Street, which is shown delineated blue on the Locality Plan.
- 4.2 The Owner has requested that Council discontinues the Road and sells the Road to them (**Proposal**).
- 4.3 The Owner owns the following properties which abut the Road:
 - 4.3.1 3-5 Northumberland Street, South Melbourne;
 - 4.3.2 80-82 Cecil Street, South Melbourne (**80-82 Cecil Street**), shown delineated orange on the Locality Plan;
 - 4.3.3 84-94 Cecil Street, South Melbourne; and
 - 4.3.4 the former road at 80-94 Cecil Street, South Melbourne.
- 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:
 - 4.5.1 constructed of bluestone pitchers; and
 - 4.5.2 shown as a 'way' on Crown Grant 3490/1852 attached as Attachment 3.
- 4.6 It is considered that the Road is not reasonably required for public use as:
 - 4.6.1 there is no evidence of the Road being used by the public for access to any of the abutting properties from Market Street;
 - 4.6.2 the Road is a dead end and does not provide public access from Market Street as a thoroughfare to any other public road; and



4.6.3 all abutting properties have direct alternative access to the abutting public roads Market Street, Cecil Street and Northumberland Street, South Melbourne.

4.7 The Road is a 'road' for the purposes of the Act. Council has the statutory power to discontinue the Road. If the Road is discontinued, the Road will vest in Council.

Consolidation

4.8 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 adjoining property of the Owner within 12 months of the date of transfer of the discontinued Road to the Owner, at the Owner's expense.

Adjoining Owner

4.9 The Road also abuts the property at 78 Cecil Street, South Melbourne (**78 Cecil Street**), shown delineated green on the Locality Plan.

4.10 Council officers required the Owner to seek the consent of the owner of 78 Cecil Street (**Adjoining Owner**), to the Proposal.

4.11 On 4 October 2018, the Adjoining Owner objected in writing to the Proposal on the basis that the Proposal would:

4.11.1 restrict access to 78 Cecil Street;

4.11.2 affect the architecture of future development of 78 Cecil Street; and

4.11.3 devalue 78 Cecil Street by reducing its frontages from three to two.

4.12 On 10 October 2018, the Owner, pending its ongoing negotiations with the Adjoining Owner in respect of the Proposal, made a revised proposal to Council (**Revised Proposal**) to discontinue only that part of the Road which does not abut 78 Cecil Street, as shown highlighted in purple on the Plan (**Laneway Parcel**).

4.13 On 20 November 2018, architects acting on behalf of the Adjoining Owner objected in writing to the Revised Proposal, on the basis that:

4.13.1 the Laneway Parcel is used by vehicles making deliveries to the business at 78 Cecil Street; and

4.13.2 any vehicles exiting onto Market Street from a proposed development at 78 Cecil Street would first reverse over the Laneway Parcel.

4.14 On 3 December 2018, the Owner contended that the Adjoining Owner's objection should not restrict Council from proceeding with the Revised Proposal, on the basis that:

4.14.1 the Adjoining Owner's private right of carriageway has been extinguished by the existence of a public right of way over the Road;

4.14.2 the majority of deliveries to 78 Cecil Street are made from an entrance at Market Street;

4.14.3 any deliveries vehicles entering the Road have no reason to proceed past the southern boundary of 78 Cecil Street, and pass over the Laneway Parcel; and

4.14.4 the Adjoining Owner's development is theoretical and lacks detail.

4.15 On 2 January 2019, Council's Traffic Engineers advised the following:



- 4.15.1 the Road does not provide vehicular access to other abutting properties;
 - 4.15.2 the proposed discontinuance of the Laneway Parcel would maintain pedestrian access to the rear of 78 Cecil Street;
 - 4.15.3 there are no current planning applications which are affected by the proposed discontinuance; and
 - 4.15.4 any future development of abutting properties would need to consider latest site conditions in its design.
- 4.16 The Adjoining Owner then sold 78 Cecil Street to the Owner under a contract of sale dated 27 March 2019.
- 4.17 The Adjoining Owner withdrew their objection to the Proposal, under a deed of settlement between the Adjoining Owner and the Owner dated 30 July 2019.

Site Inspection

- 4.18 A site inspection report was provided by Millar Merrigan Land Development Consultants dated 24 April 2019 . The site inspection report notes that:
- the Road is constructed of bluestone pavers;
 - the only evidence of the Road being used is that it provides access to car parking at 119-125 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 has roller doors which abut the Road and appear to have been unused for some time;
 - while the property at 78 Cecil Street has a door and window which abut the Road, it is understood that the Owner has purchased this property and on this understanding the door and window would not have been considered as a factor in the report;
 - 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.

Alternative Uses

- 4.19 Each proposed road discontinuance and sale is assessed independently of any related planning permit application. Such is evaluated based on Council's Discontinuance and Sale of Roads Policy (**Policy**) taking into account whether or not it is reasonably required for public use, and not what the future use of the discontinued road would be for the prospective purchaser. However, as enquiries into the planning permit for this case have been raised, they have been considered in the assessment.
- 4.20 Under the planning permit for 119-125 Market Street, 80-94 Cecil Street and 3-5 Northumberland Street, the Owner must provide evidence in writing that an agreement has been reached to purchase from Council the Road as incorporated in the development and proposed to be built over. In addition, should the purchase of the Road not proceed, the development would need to be revised to Council's satisfaction.



- 4.21 Council's Public Space Strategy is investigating opportunities for laneways and other inner urban spaces to provide non-conventional public space opportunities. South Melbourne is an area where this type of provision could occur. However, Recreation and Open Space Planning team has advised that this Road would be quite difficult to activate as it is oriented away from the activity of the South Melbourne Market. It also appears that the adjacent Owner may not be a willing partner in such process.
- 4.22 It is considered that the Road is not suitable for any alternative use such as Public Open Space or other community use.

5. CONSULTATION AND STAKEHOLDERS

Public Authorities

- 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 Council;
 - 5.1.2 South East Water;
 - 5.1.3 Melbourne Water;
 - 5.1.4 CitiPower;
 - 5.1.5 Multinet;
 - 5.1.6 Telstra; and
 - 5.1.7 Optus.
- 5.2 Council Assets team advised it has no objection to the Proposal, provided that the Owner, in accordance with Council's Policy, either:
- 5.2.1 purchases the bluestone pitchers within the Road at market value, currently at \$216 per square metre; or
 - 5.2.2 reimburses Council's costs incurred in removing the bluestone pitchers from the Road.
- The Owner has agreed to reimbursing Council's costs incurred in removing the bluestone pitchers from the Road if Council believes they still have value.
- 5.3 Relevant Council departments have been notified by way of internal referral.
- 5.4 Multinet advised it has no assets in or above the Road and no objection to the proposed discontinuance of the Road.
- 5.5 Optus advised it has no assets in or above the Road.
- 5.6 CitiPower and Melbourne Water advised that they have no objection to the proposed discontinuance of the Road.



- 5.7 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:
- 5.7.1 calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road to determine the exact location of Telstra assets; and
 - 5.7.2 in the event that Telstra's assets require relocation, engages Telstra's Asset Relocation team to obtain a quote to relocate the assets.
- 5.8 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.

Public Notice

- 5.9 Council has notified the community of the Proposal 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 date of 26 November 2019.
- 5.10 No submissions were received by Council in response to the public notice.

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 has a Policy that enables roads that are no longer required for public access to be discontinued and sold to the adjoining owner(s), subject to Council approval and statutory requirements.
- 6.3 Council's Policy also ensures that roads reasonably required for public access remain open to the public.

7. FINANCIAL IMPACT

- 7.1 The Owner has agreed to acquire the Road for its market value (plus GST). If Council proposes to sell the Road, it will need to obtain a valuation of the Road in accordance with the Act. This is also in line with Council's Policy.
- 7.2 The market valuation obtained by Council assessed the Road as \$8,000 per square metre plus GST, multiplied by 92 square metres, equating to an assessed market value of \$736,000 plus GST.
- 7.3 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, Council's costs associated with the removal of the bluestone pitchers from 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 the road discontinuance and sale is in the best interest of the 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 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 The Proposal is in accordance with Council's Policy.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

If the Proposal is approved:

- 11.1.1 a notice will be published in the *Victoria Government Gazette* to formally discontinue the Road; and
- 11.1.2 a transfer of the discontinued Road pursuant to section 207D of the Act will be prepared by Council's solicitors.

11.2 COMMUNICATION

- 11.2.1 The public notification process has provided the community with the opportunity to make submissions in respect of the Proposal. Having considered that no submissions were received, Council may now determine whether to discontinue and sell the Road.
- 11.2.2 The Owner will be advised of the final Council decision and the reasons for it within 5 days of the Council meeting.



ORDINARY MEETING OF COUNCIL 19 FEBRUARY 2020

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: 20/13/35

ATTACHMENTS

1. Title Plan 965714M
2. Locality Plan
3. Crown Grant 3490/1852
4. Site Inspection Report