



13.2 **PROPOSED DISCONTINUANCE AND SALE OF ROAD
ABUTTING 26 AND 28 WELLINGTON STREET ST KILDA**

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

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1. PURPOSE

1.1 This report seeks Council's approval to:

- 1.1.1 consider removing the road abutting 26 and 28 Wellington Street, St Kilda, known as R3723, being the land contained in Memorial Book 22 Number 809 and Memorial Book 298 Number 450 (Road), and shown as Lot '1' on the Title Plan attached as Attachment 1 to this report (Title Plan) from Council's Register of Public Roads (Register);
- 1.1.2 commence statutory procedures pursuant to the Local Government Act 1989 (Vic) (Act) to consider discontinuing the Road. If the Road is discontinued, the Road is proposed to be sold to HHomes Victoria, the owner of the adjoining property at 28 Wellington Street, St Kilda (28 Wellington Street) for \$1 plus legal fees.

2. EXECUTIVE SUMMARY

- 2.1 The Road is approximately 79 square metres and located between 26 and 28 Wellington Street, St Kilda.
- 2.2 The Road is shown hatched in Attachment 2 (Locality Plan).
- 2.3 The Road is shown on title as a 'road' in the two general law searches attached to this report as Attachment 3 (Old Law Conveyances).
- 2.4 The Road is laneway R3723 which is listed on the Register.
- 2.5 The Road is constructed in concrete and used for pedestrian access to several units at 28 Wellington Street, St Kilda together with vehicle access to several car spaces at the rear of that property. The adjoining property at 26 Wellington Street, St Kilda (26 Wellington Street) does not currently use the road for access.
- 2.6 The Road:
 - 2.6.1 does not provide vehicular or pedestrian access to any property other than the intended purchasers; and
 - 2.6.2 is not required for public access to adjoining properties.
- 2.7 Council is required to consider whether to:
 - 2.7.1 remove the Road from the Register and
 - 2.7.2 commence the statutory procedures to discontinue and sell the Road.
- 2.8 A recent market valuation of \$4,620 (inclusive of GST) per square metre for unencumbered land in the Road and \$935 (inclusive of GST) per square metre for



encumbered land in the Road has been obtained. This translates to \$364,980 (inclusive of GST) unencumbered and \$73,865 (inclusive of GST) encumbered.

- 2.9 At this time, treatment of the land in the Road (whether encumbered or unencumbered) is yet to be confirmed given negotiations with South East Water are on-going as noted in items 5.4, 5.5 and 5.6 of the report. A determination in regard to the final value of the land in the Road can therefore be made once the preferred outcome is known.
- 2.10 St Kilda Community Housing Ltd, with the support of Council and Homes Victoria, aims to develop a 24-unit Common Ground facility at 28 Wellington Street, on land owned by Homes Victoria. This facility will provide supported housing to accommodate persons listed on the Port Phillip By-Name List, who are homeless and sleeping rough in Port Phillip.
- 2.11 At its meeting on 2 September 2020, Council endorsed the development of this 24-unit Common Ground facility by committing \$4 million in capital funding from the In Our Backyard Reserve and contributing the Road at a nominal amount to provide space for access and car parking required by the development.
- 2.12 If discontinued, the Road is proposed to be sold to Homes Victoria for \$1 plus legal costs. At this stage, the direct legal costs with Council undertaking the discontinuance and sale of the Road have been estimated to be \$28,000.
- 2.13 Officers propose that Council considers removing the Road from the Register 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 commencing the statutory procedures to discontinue the Road.

3. RECOMMENDATION

That Council:

- 3.1 Acting under section 17(4) of the Road Management Act 2004 (Vic), resolves that the road abutting 26 and 28 Wellington Street, St Kilda, known as R3723, being the land contained in Memorial Book 22 Number 809 and Memorial Book 298 Number 450 (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 28 Wellington Street, St Kilda for a nominal amount of \$1 plus legal costs;
 - 3.2.4 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; and
 - 3.2.5 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 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 It should be noted that the Policy was developed in 2011. A review of the Policy is scheduled to be completed in 2022, along with the processes and procedures that support the implementation of the Policy.

Road

- 4.7 The Road has an area of approximately 79 square meters and shown as lot '1' on the Title Plan.
- 4.8 The Road, shown hatched on the Locality Plan, abuts 26 and 28 Wellington Street, St Kilda.
- 4.9 The Road is shown on title as a road in Memorial Book 22 Number 809 and Memorial Book 298 Number 450 which are attached as Attachment 3.
- 4.10 The Road is laneway R3723 which is listed on the Register.
- 4.11 Council has statutory power to consider discontinuing the Road.
- 4.12 If the Road is discontinued, the land will vest in Council free of road status.

Site Inspection

- 4.13 A site inspection of the Road was conducted by Macquarie Local Government Lawyers on 3 November 2021. The inspection noted:
 - 4.13.1 the Road is open and available for use for both vehicle and pedestrian traffic.
 - 4.13.2 the Road is constructed in concrete.
 - 4.13.3 the Road comprises the first half of the driveway at 28 Wellington Street and has in the past been used for pedestrian access to the 12 rooming house rooms and associated facilities on site together with vehicle access to the car spaces at the rear of that site.
 - 4.13.4 the adjoining property at 26 Wellington Street does not currently use the Road for access as vehicles enter an underground garage from a driveway within the property, as shown in the photograph in Attachment 4 (Photo of the Road).



4.13.5 there is no evidence that the Road is used for a public purpose.

Proposal

- 4.14 St Kilda Community Housing Ltd, with the support of Council and Homes Victoria, aims to develop a 24-unit Common Ground facility at 28 Wellington Street, for the provision of supported housing to accommodate persons listed on the Port Phillip By-Name List, who are homeless and sleeping rough in Port Phillip.
- 4.15 St Kilda Community Housing Ltd has requested that Council considers the possible discontinuance and sale of the Road to allow for the land to be incorporated into the proposed development (Proposal).
- 4.16 If the Road is discontinued, the Road will vest in Council.
- 4.17 Homes Victoria is the owner of 28 Wellington Street. Accordingly, if the Road is discontinued, it would be Council's intention to sell the Road to Homes Victoria.

Consolidation

- 4.18 It will be necessary for Homes Victoria to consolidate the title to the discontinued Road with its existing property title as part of the development.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The owners of the 15 units together with the Owners corporation for 26 Wellington Street have been informed of the Proposal. At this stage no objections have been received.
- 5.2 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 require 'rights' to be 'saved' under section 207C of the Act:
- Council;
 - South East Water;
 - Melbourne Water;
 - Multinet Gas;
 - CitiPower;
 - Telstra; and
 - Optus.
- 5.3 Council's Asset Management team advised that Council has no assets in or above the Road and it has no objection to the Proposal.
- 5.4 South East Water (**SEW**) advised that it has no assets in the Road itself and as a result consents to the Proposal. SEW's consent is, however, conditional on:
- 5.4.1 the SEW sewerage connection point servicing 26 Wellington Street being cut and sealed and a new connection provided within the title boundary of 6 Wellington Street; and
- 5.4.2 the internal property service drains for 26 Wellington Street being removed from the Road and relocated to within the title boundary of 26 Wellington Street.



- 5.5 Consultants acting on behalf of St Kilda Community Housing Ltd are of the view that the above works are unnecessary and that the private assets within the Road belonging to 26 Wellington can be adequately protected with an appropriate easement.
- 5.6 Negotiations are continuing with SEW on the preferred outcome.
- 5.7 The remaining statutory authorities advised that they have no objection to the Proposal as they do not have any assets in 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 general public and those not reasonably required for general access may be discontinued and sold.

7. FINANCIAL IMPACT

- 7.1 A recent market valuation of \$4,620 (inclusive of GST) per square metre for unencumbered land in the Road and \$935 (inclusive of GST) per square metre for encumbered land in the Road has been obtained. This translates to \$364,980 (inclusive of GST) unencumbered and \$73,865 (inclusive of GST) encumbered.
- 7.2 At this time, treatment of the land in the Road (whether encumbered or unencumbered) is yet to be confirmed given negotiations with South East Water are on-going as noted in items 5.4, 5.5 and 5.6 of the report. A determination in regard to the final value of the land in the Road can therefore be made once the preferred outcome is known.
- 7.3 At its meeting held on 2 September 2020, Council endorsed its support for the development of the proposed Common Ground facility at 28 Wellington Street by, amongst other things, resolving as follows:

“Contributing the Council laneway known as R3723 abutting and comprising the first half of the driveway at 28 Wellington Street, noting that St Kilda Community Housing has requested that Council initiate the procedures required to discontinue and sell the lane, at a nominal amount to the Department of Health & Human Services to provide space for access and car parking required by the development, by:

- *Supporting St Kilda Community Housing's request and resolving to contribute the laneway known as R3723 for \$1 plus legal fees pending the successful completion of the statutory procedures required under the Road Management Act 2004 (Vic) and Local Government Act 1989 (Vic) to discontinue and sell the laneway.*
- *Entering into a section 173 Agreement under the Planning and Environment Act 1987 requiring the market value of the lane to be paid to Council if the social housing use of the adjoining property ceases or the adjoining property is sold within 30 years of completion of the project.”*



- 7.4 It is also in this meeting that Council endorsed the development of this 24-unit Common Ground facility by committing \$4 million in capital funding from the In Our Backyard Reserve.

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 Proposal will support the development of a social housing facility within the municipality for the benefit of the community.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The Proposal aligns with the Strategic Direction **Well Governed Port Phillip** – a leading government authority, where our community and our organisation are in a better place as a result of our collective efforts.
- 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 reasonably required as a road for general 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.









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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 material or general interest in the matter.

- ATTACHMENTS**
1. Title Plan  
 2. Locality Plan  
 3. Old Law Conveyances  
 4. Photo of the Road 