



**14.1** PROPOSED DISCONTINUANCE AND SALE OF ROADS  
R3187 AND PART R4053 ABUTTING 454-456 CITY ROAD,  
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 roads known as R3187 and part R4053 abutting 454-456 City Road, South Melbourne, being part of the land contained in certificate of title volume 1871 folio 161 (**Roads**) from Council's Register of Public Roads pursuant to section 17(4) of the *Road Management Act 2004* (Vic) (**RMA**); and
- commence the statutory procedures pursuant to the *Local Government Act 1989* (Vic) (**Act**) to consider discontinuing the Roads. If the Roads are subsequently discontinued, they are proposed to be sold to the adjoining owner for market value.

**2. EXECUTIVE SUMMARY**

- 2.1 The owner of 454-456 City Road, South Melbourne (**Owner**) has requested that Council discontinue the Roads and sell the Roads to them (**Proposal**).
- 2.2 The Roads are 18 square metres in total area and abut 454-456 City Road, South Melbourne.
- 2.3 The Roads known as R3187 and part R4053 are listed on Council's Register of Public Roads.
- 2.4 It is considered that the Roads are no longer reasonably required for general public use as they:
- are fenced within the Owner's properties;
  - are not open to the general public for pedestrian or vehicular access and have not been open or available since at least 2009; and
  - do 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 Roads, together with the market value, which was assessed at \$90,000 plus GST, for the transfer of the discontinued Roads to the Owner.
- 2.6 Council is now in a position to consider whether to:
- remove the Roads from Council's Register of Public Roads; and
  - commence the statutory procedure to discontinue and sell the Roads.
- 2.7 Officers propose that Council considers removing the Roads from Council's Register of Public Roads on the basis that the Roads are 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 Roads.

- 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 roads known as R3187 and part R4053 abutting 454-456 City Road, South Melbourne, being part of the land contained in certificate of title volume 1871 folio 161 (**Roads**) be removed from Council's Register of Public Roads on the basis that the Roads are 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 Roads;
  - 3.2.2 directs that under sections 207A and 223 of the Act public notice of the proposed discontinuance of the Roads 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 are discontinued, Council proposes to sell the Roads to the adjoining owner for market value;
  - 3.2.4 notes that the current market value of the Roads was assessed to be \$90,000 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 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 the 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.

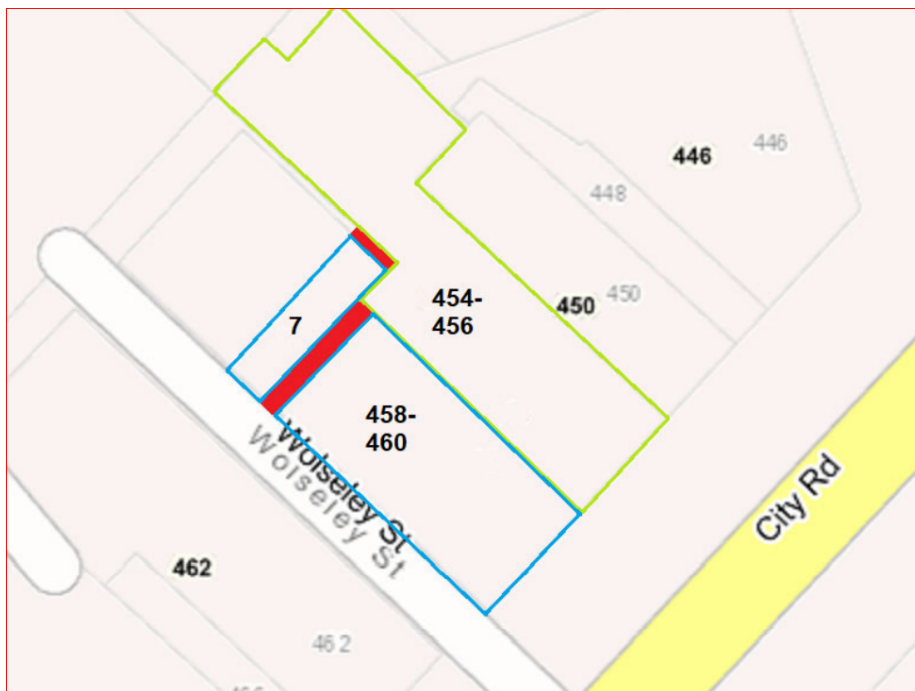
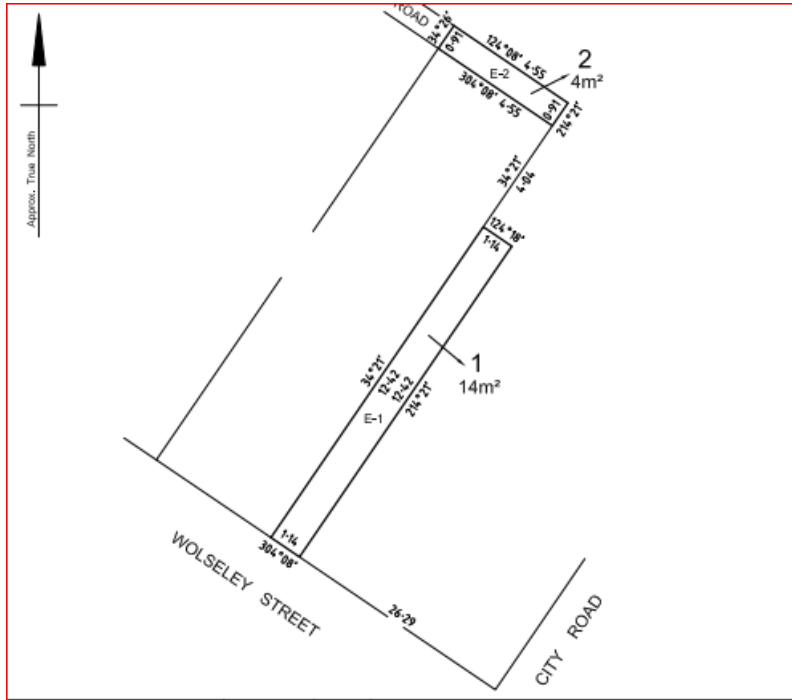


- 4.4 If the land is subsequently sold, it will be done at the current market value for the land in that location unless exceptional circumstances deem a discounted price appropriate.
- 4.5 Any discontinuance and sale of a road is to be carried out according to the provisions of Clause 3 of Schedule 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 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 The owner of 454-456 City Road, South Melbourne has requested that Council discontinue the Roads and sell the Roads to them.

#### **Road**

- 4.8 The Roads are shown as lots '1' and '2' on the title plan (**Title Plan**) attached as Attachment 1 to this report.
- 4.9 The Roads, shown delineated red on the locality plan attached as Attachment 2 (**Locality Plan**) abut 454-456 City Road, South Melbourne which is shown delineated green on the Locality Plan.
- 4.10 The Roads are 18 square metres in total area and abut the following properties owned by the Owner, which are shown delineated blue on the Locality Plan:
  - 458-460 City Road, South Melbourne; and
  - 7 Wolseley Street, South Melbourne.
- 4.11 The title to the Roads is contained in certificate of title volume 1871 folio 161, being part of Roads R2 and R3 on title plan TP1178, which is attached as Attachment 3.
- 4.12 The Roads are described as 'passage ways' on TP1178, and are 'roads' for the purposes of the Act.
- 4.13 The Roads known as R3187 and part R4053 are listed on Council's Register of Public Roads.
- 4.14 Council has statutory power to consider discontinuing the Roads.
- 4.15 If the Roads are discontinued, the Roads will vest in Council (section 207B of the Act).
- 4.16 The Roads are currently enclosed within the Owner's land and have been fenced in since at least 2009.

# MEETING OF THE PORT PHILLIP CITY COUNCIL 3 FEBRUARY 2021





- 4.17 Site inspections of the Roads were conducted by Goodison Surveying on 17 July 2020. Copies of these reports are attached as Attachment 4.
- 4.18 The site inspection report in respect of the Road shown as lot '1' on the Title Plan i.e. R3187 (Lot 1 Road) notes that:
- the Lot 1 Road is constructed of concrete paving;
  - there is no evidence of the Lot 1 Road being used;
  - the Lot 1 Road is wholly enclosed behind a roller door at its boundary which abuts Wolseley Street, South Melbourne;
  - a hot water service and a gas meter encroach over part of the Lot 1 Road, and an air conditioning unit encroaches over the airspace above the Lot 1 Road, from the boundary of the property at 458-460 City Road, South Melbourne; and
  - the Lot 1 Road is not open and is not available for public use.
- 4.19 The Site inspection report in respect of the Road shown as lot '2' on the Title Plan i.e. part R4053 (Lot 2 Road) notes that:
- the Lot 2 Road is constructed of concrete paving;
  - there is no evidence of the Lot 2 Road being used;
  - the Lot 2 Road is wholly fenced within the Owner's properties;
  - an iron shed encroaches over part of the Lot 2 Road;
  - there is no evidence of the Lot 2 Road being used; and
  - the Lot 2 Road is not open and is not available for public use.



### **Adjoining Properties**

4.20 As the Owner is the registered proprietor of all the properties which abut the Roads, the Owner was not required to seek the consent of any other adjoining owners to the Proposal.

### **Application**

4.21 The Owner has agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Roads, together with the market value for the transfer of the discontinued Roads to the Owner.

4.22 If the Roads are discontinued and sold to the Owner, Council will require the Owner to consolidate the title to the discontinued Roads with the title to the Owner's land within 12 months of the date of transfer of the Roads to the Owner, at the Owner's expense.

### **Analysis**

4.23 It is considered that the Roads are no longer reasonably required for general public use as the Roads:

- are fenced within the Owner's properties;
- are not open to the general public for pedestrian or vehicular access and have not been open or available since at least 2009; and
- do not form part of a thoroughfare for pedestrian or vehicular traffic to any other public road.

4.24 The Proposal has been referred internally within Council and no objections have been received. This highlights that the Roads are deemed to have no strategic purpose for Council.

4.25 The proposed discontinuance and sale of the Roads will enable the land in the Roads 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.

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

- 4.26.1 remove the Road from Council's Register of Public Roads; and
- 4.26.2 commence the statutory procedure to discontinue and sell the Road.

4.27 Officers propose that Council considers removing the Roads from Council's Register of Public Roads on the basis that the Roads are 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 Roads.

4.28 If the Roads are subsequently discontinued, the Roads are proposed to be sold to the Owner at market value which is currently of \$90,000.00 plus GST, for the reasons set out in this report.

## **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 Roads, which should be saved under section 207C of the Act:

- Port Phillip City Council;



## MEETING OF THE PORT PHILLIP CITY COUNCIL 3 FEBRUARY 2021

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

- 5.2 Council Asset Management team has advised that it has no assets in or above the Roads and that it has no objection to the Proposal.
- 5.3 Other relevant internal Council teams have been consulted and no one has objected to the Proposal.
- 5.4 Optus has advised that it has no assets in or above the Roads.
- 5.5 Melbourne Water, CitiPower and Multinet have advised that they have no objection to the Proposal.
- 5.6 In a letter dated 12 July 2020, Telstra advised that it has no assets in the near vicinity of the Roads, and would not object to the Proposal provided that the Owner calls 'Dial Before You Dig' before carrying out works in the vicinity of the Roads.
- 5.7 In a letter dated 15 July 2020, South East Water advised it has an existing 100mm diameter sewer mains within the Roads, but would not object to the Proposal provided that upon consolidation of the Roads, sewerage easements were granted. Appropriately sized sewerage easements in favour of South East Water are included on the Title Plan in response to South East Water's request.

### **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 Owner has agreed to acquire the Roads for their market value (plus GST). If Council proposes to transfer the Roads, it will need to obtain a valuation of the Roads 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 Roads, together with the market value for the transfer of the discontinued Roads to the Owner.
- 7.3 The market valuation of the land in the Roads is \$5,000 per square metre plus GST totalling a purchase price of \$90,000.00 plus GST. The valuation was undertaken on 25 September 2020 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 Roads is based on the following assumptions:
- full value of the land is applicable to the Roads as though they are consolidated with the Owner's properties;



- no discount is applicable to the full land value due to the limited purchasing market for the Roads; and
- the Roads are not valued on the “before and after” method but are instead valued on the “street land value rate” of the consolidated site assuming the Roads are consolidated with the Owner’s properties.

## 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 Roads will enable the land in the Roads to be re-purposed.

9.3 If Council resolves to discontinue and sell the Roads, 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 Roads aligns with the Strategic Direction 6 Our Commitment to You in the Council Plan 2017-27 through supporting:

- transparent governance and an actively engaged community; and
- 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

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 Roads are not reasonably required as a road for public use, in order to decide whether the Roads should be discontinued.

### 11.2 COMMUNICATION

11.2.1 Council can resolve to commence statutory procedures to discontinue the Roads.





- 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 Roads 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 Roads.

## **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
2. Locality Plan
3. TP 1178
4. Site Inspection Report