

MEETING OF THE PORT PHILLIP CITY COUNCIL

3 AUGUST 2022



13.1 PROPOSED DISCONTINUANCE OF ROAD ABUTTING 50 NIMMO STREET, MIDDLE PARK

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

PREPARED BY: BRIDGETTE KENNEDY, TEAM LEADER PROPERTY OPERATIONS

1. PURPOSE

1.1 To seek Council's approval to:

1.1.1 Remove the road abutting 50 Nimmo Street, Middle Park, being part of the land contained in Crown grant 1436 folio 082 and part of the land contained in certificate of title volume 6345 folio 984, being part of R1987 (**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 Roads are subsequently discontinued, they are proposed to be sold to the adjoining owner for market value.

2. EXECUTIVE SUMMARY

2.1 The owners of 50 Nimmo Street, Middle Park (Owner) have requested that Council discontinues and sells the Road to them (Proposal).

2.2 The Road is approximately 4.7 square metres in total area and abuts 50 Nimmo Street, Middle Park.

2.3 The Road is listed on Council's Register of Public Roads, also known as part R1987.

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 wholly enclosed between the walls and fences of the adjoining properties, and behind gates at its northern and southern ends;

2.4.2 is not open to the general public for pedestrian or vehicular access; and

2.4.3 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 Road, together with the market value, which was assessed at \$37,500 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 abutting 50 Nimmo Street, Middle Park, being part of the land contained in Crown grant 1436 folio 082 and part of the land contained in certificate of title volume 6345 folio 984, being part of R1987 (**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 50 Nimmo Street, Middle Park for market value;
 - 3.2.4 notes that the current market value of the Road is currently assessed to be \$37,500 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 owners of 50 Nimmo Street, Middle Park (Owner) have requested that Council discontinues and sells the Road to them (Proposal).

Road

- 4.7 The Road is shown as lot '1' on proposed title plan no. TP965737Y attached as Attachment 1 to this report.
- 4.8 The Road, shown delineated red on the locality plan attached as Attachment 2 (Locality Plan), abuts 50 Nimmo Street, Middle Park, which is shown delineated green on the Locality Plan (Owner's Property).



- 4.9 Other than the Owner's Property, the following properties abut the Road:

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- 4.9.1 48 Nimmo Street, Middle Park, being the balance of the land contained in certificate of title 6345 folio 984 and shown delineated orange on the Locality Plan (48 Nimmo Street); and
- 4.9.2 254 Richardson Street, being the land contained in certificates of title volume 5010 folio 921 and volume 7946 folio 199 and shown delineated blue on the Locality Plan (254 Richardson Street).
- 4.10 Additionally, the following properties (which abut the balance of the laneway but do not directly abut the Road) have a legal abuttal on title and a registered right of carriageway over the Road:
 - 4.10.1 52 Nimmo Street, Middle Park, being the land contained in certificate of title 3053 folio 555 and shown delineated purple on the Locality Plan (52 Nimmo Street), and
 - 4.10.2 54 Nimmo Street, Middle Park, being the land contained in certificate of title 5309 folio 659 and shown delineated pink on the Locality Plan (54 Nimmo Street).
- 4.11 The title to the Road is contained in:
 - 4.11.1 part of Crown grant volume 1436 folio 082, being part of lot 1 on TP921702S; and
 - 4.11.2 part of certificate of title 6345 folio 984, being part of Lot 1 on TP377954T.
- 4.12 The Road is encumbered by carriageway easements on the respective title plans, searches of which are attached as Attachment 3. Carriageway easements are 'rights of way', which are 'roads' for the purposes of the Act.
- 4.13 The Road is listed on Council's Register of Public Roads, also known as part R1987.
- 4.14 Council has statutory power to consider discontinuing the Road.
- 4.15 If the Road is discontinued, the Road will vest in Council (section 207B of the Act).

Site Inspection

- 4.16 A site inspection of the Road was conducted by Millar Merrigan on 1 December 2021.
- 4.17 The site inspection notes that:
 - 4.17.1 the Road is not constructed as a road;
 - 4.17.2 there is no evidence of the Road being used;
 - 4.17.3 The locked gate at the northern end of the Road (abutting 48 Nimmo Street) does not appear to have been recently used for access to that property;
 - 4.17.4 the gate at the southern end of the laneway (of which the Road forms part) provides access to 115 Neville Street only;
 - 4.17.5 the proposed discontinuance of the Road would not affect access to 115 Neville Street from the balance of the laneway;
 - 4.17.6 the Road only provides access to the rear of 48 Nimmo Street; and
 - 4.17.7 all properties which abut the Road have direct alternative access to the surrounding public roads.



4.18 A copy of the site inspection report is attached as Attachment 4 to this report.

Adjoining Properties

4.19 Council is the registered proprietor of the property at 254 Richardson Street.

4.20 Accordingly, the Owner was requested to seek the written consent of the owners of the following properties to the Proposal:

4.20.1 the adjoining property at 48 Nimmo Street; and

4.20.2 the additional properties which have a legal abuttal on title and a registered right of carriageway over the Road, at 52 and 54 Nimmo Street,

(together, the Adjoining Owners).

4.21 The Adjoining Owners have provided written consent to the Proposal.

Application

4.22 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.

4.23 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

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

4.24.1 is not sufficiently wide to permit vehicular access;

4.24.2 is not constructed as a road and is overgrown with vegetation, restricting pedestrian access over the Road;

4.24.3 is part of a larger laneway which is wholly enclosed behind a gate at its southern border at Neville Street, Middle Park;

4.24.4 is enclosed behind a gate at its northern border with the property at 48 Nimmo Street, and does not appear to have been used for access to that property for some time; and

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

4.25 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.

4.26 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.

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



- 4.27.1 remove the Road from Council's Register of Public Roads; and
- 4.27.2 commence the statutory procedure to discontinue and sell the Road.
- 4.28 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.
- 4.29 If the Road is subsequently discontinued, the Road is proposed to be sold to the Owner at market value which is currently of \$37,500 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 South East Water;
 - 5.1.3 Melbourne Water;
 - 5.1.4 CitiPower;
 - 5.1.5 Multinet Gas;
 - 5.1.6 Telstra; and
 - 5.1.7 Optus.
- 5.2 Council's Asset Management Team has advised that Council has no assets in or above the Road and no objection to the Proposal.
- 5.3 Optus has advised that it has no assets in or above the Road.
- 5.4 Melbourne Water, CitiPower and Multinet Gas have advised that they have no objection to the Proposal.
- 5.5 In a letter dated 1 November 2021, Telstra advised that it has no assets in the near vicinity of the Road, and would not object to the Proposal provided that the Owner:
 - 5.5.1 calls 'Dial Before You Dig' before carrying out any construction activities in the vicinity of Telstra's communication plant;
 - 5.5.2 upon receipt of plans, obtains a Telstra accredited Asset Plant Locator to confirm the location of the plant.
- 5.6 In a letter dated 11 November 2021, South East Water advised it has an existing 150mm diameter VC sewer branch within the area, but would not object to the Proposal provided that upon consolidation of the Road, an appropriately sized sewerage easement in favour of South East Water be included over the sewer main. A sewerage easement in favour of South East Water was included on the Title Plan.
- 5.7 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 notice, lodge a written submission regarding the Proposal.



- 5.8 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.
- 5.9 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 \$8,000 per square metre plus GST totalling a purchase price of \$37,500 plus GST (rounded off by Council's appointed valuers). The valuation was undertaken on 2 June 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 full value of the land is applicable to the Road as though it is consolidated with the Owner's Property;
 - 7.3.2 no discount is applicable to the full land value due to the limited purchasing market for the Road; and
 - 7.3.3 the Road is not valued on the "before and after" method but is instead valued on the "street land value rate" of the consolidated site assuming the Road is consolidated with the Owner's Property.

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 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.
- 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. Proposed Title Plan No. TP965737Y
2. Locality Plan
3. Title Plans Nos. TP921702S and TP377954T
4. Site Inspection Report