



10.1 MOUBRAY STREET COMMUNITY PARK - ROAD CLOSURE

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1. PURPOSE

1.1 The purpose of this report is to:

- to consider removing the road known as part of Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 to this report (Road) from Council's Register of Public Roads (Register); and
- to commence the statutory procedures to consider discontinuing the Roads pursuant to Clause 3 of Schedule 10 of the Local Government Act 1989 (Vic) (Act) noting that if the Road is discontinued, the Road will vest in Council in fee simple.

2. EXECUTIVE SUMMARY

- 2.1 The Moubray Street Pop Up Park is situated on part of the Road known as part of Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 to this report (Road)
- 2.2 The Road has an area of approximately 192 m² and forms part of the local road known as MOUS02-20 on Council's Register of Public Roads.
- 2.3 This section of Road, is located adjacent to Albert Park Primary School and has operated as a Pop-Up Park (in temporary form) since 2013.
- 2.4 On 24 May 2016, Council also resolved to: "preserve the intention to create a permanent public open space in the closed section of Moubray Street, subject to funding".
- 2.5 The transformation of the closed road space into a permanent park requires a formal road discontinuance process.
- 2.6 Council has statutory power to consider discontinuing the Road.
- 2.7 A submission has been made to the Department of Environment Land Water and Planning (DELWP) to transfer \$1.3 million of Local Parks Program Funding from Cobden Street Pocket Park project to Moubray Street Community Park.
- 2.8 Council is required to consider whether to:
 - remove the Road from the Register and
 - commence the statutory procedures to discontinue and sell the Road.



- 2.9 The process to discontinue this part of Moubray Street requires community engagement, consultation with service authorities and the Department of Transport (DoT).
- 2.10 If the Road is discontinued, the Road will vest in Council in fee simple.
- 2.11 Most of the affected area of Moubray Street is already operating as a park and discontinuance will not further impact on adjoining roads or users of those roads.
- 2.12 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 to remove the Road known as part Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 to this Report 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 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, the Road will revert to Council for the purposes of a public park and public recreation
 - 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 the matter; and
 - 3.2.5 resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting to be determined at a later date.

4. KEY POINTS/ISSUES

- 4.1 The Moubray Street Pop Up Park is situated on part of the local road known as Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 to this report (Road).
- 4.2 The Road has an area of approximately 192 m² and forms part of the local road known as MOUS02-20 on Council's Register of Public Roads.
- 4.3 The Moubray Street Pop Up Park was established as a trial in July 2013 to provide a public open space for the local community and to ease pressure being experienced by the Albert Park Primary School caused by growing enrolments and limited school ground open space.
- 4.4 Council, on 25 November 2015, commenced a statutory process for a permanent road closure of the Road, in accordance with section 207 of the Act (Power of Council over



roads) and Schedule 11, Clause 9 (Power to place obstructions or barriers on a road permanently).

- 4.5 On 24 May 2016, Council finalised the statutory road closure process, by approving the permanent road closure the Road. The permanent road closure has enabled the retention of the temporary Pop Up Park. This road closure also enables the next statutory step to be taken for the establishment of a permanent Moubray Street Community Park, through discontinuance of the Road.
- 4.6 On 24 May 2016, Council also resolved to: “preserve the intention to create a permanent public open space in the closed section of Moubray Street, subject to funding”.
- 4.7 The transformation of the closed road space into a permanent park requires a formal road discontinuance process.
- 4.8 Council has statutory power to consider discontinuing the Road.
- 4.9 If the Road is discontinued, the Road will vest in Council in fee simple and it will be necessary for Council to take the appropriate steps to title the land.
- 4.10 A proposal to discontinue a road, under the Act, requires Council to publish a public notice, by virtue of section 207A of the Act, and to comply with the provisions of Section 223 (Right to make a submission) of the Act. This requires Council to undertake a formal public consultation process which is specific to the proposal to discontinue the road.
- 4.11 Subject to Council’s decision, Council will send mail to all properties abutting the road affected by the road discontinuance and will publish a Notice of Intent to discontinue the road in The Age newspaper. Information about the road closures, including background information and maps, will be published on Council’s Have Your Say website on Monday 12 September 2022, with an invitation for affected community members to make a submission to the proposed road discontinuance.
- 4.12 Submissions regarding the proposed road closures should be received by Council no later than 5pm Monday 10 October 2022. Instructions for how to make a submission will be available in The Age newspaper advertisement and on Council’s Have Your Say website.
- 4.13 Council will consider any submissions received at its Ordinary Meeting of Council in November 2022. Any person who makes a submission (or persons acting on their behalf) is entitled to speak to their submission at this Council Meeting.
- 4.14 Council will make a decision on whether to discontinue the road at the Ordinary Meeting of Council in November 2022 unless submissions are received, in which case, the decision will be made at a further future Ordinary meeting of Council.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The local community was engaged between 2013 and 2016 through the establishment of the initial trial Pop Up Park and the subsequent statutory process for a permanent road closure of Moubray Street, Albert Park, between Withers Street and Bridport Street West.
- 5.2 This feedback was considered when finalising the design for the Pop-Up Park adopted by Council in 2016 and will also help to shape the concept design for the permanent Moubray Street Community Park.



- 5.3 The key previous consultation steps include:
- a) Statutory requirements have been met by advertising intent of permanent closure in the Public Notice Section of The Port Phillip Leader of 3 March 2015.
 - b) Letters were distributed to Albert Park Primary School and owners/occupiers in the area bounded by Victoria Avenue, Richardson Street, St Vincent Street and Cardigan Place.
 - c) Public Notification boards were installed on power poles on Moubray Street at Pop Up Park.
- 5.4 No requests to speak at the Council Meeting in 2016 were received.
- 5.5 On 18 January 2016, VicRoads (the former State Government road authority) advised the City of Port Phillip that it had no objection to the closure of Moubray Street, Albert Park, between Withers Street and Bridport Street West, as proposed by Council. VicRoads' statutory functions in relation to road closures and discontinuances are now the responsibility of the Head, Transport for Victoria (Head, TfV).
- 5.6 Under the current road discontinuance process (pursuant to Schedule 10, Clause 3 of the Local Government Act) Council is not required to obtain any additional formal consent from the Head, TfV. This position has been recently confirmed by the Head, TfV.
- 5.7 The following statutory authorities will be advised of the proposed discontinuance of Roads and 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:
- 5.7.1 Council;
 - 5.7.2 South East Water;
 - 5.7.3 Melbourne Water;
 - 5.7.4 CitiPower;
 - 5.7.5 Multinet;
 - 5.7.6 AusNet Electricity Services;
 - 5.7.7 Australian Gas Networks;
 - 5.7.8 United Energy;
 - 5.7.9 NBN;
 - 5.7.10 APA;
 - 5.7.11 Telstra; and
 - 5.7.12 Optus.
- 5.8 At the date of this report, Council has not received responses from all of the notified statutory authorities. Such responses will be addressed in the second report to Council. Easements on Title be required in favour of these authorities dependant on these responses.



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 Discontinuance and Sale of Roads Policy (**Policy**) that enables roads that are no longer reasonably required for general public access to be discontinued.
- 6.3 A preliminary soil contamination assessment was undertaken for the Moubray St Pop-Up Park, in June 2015. Four boreholes were drilled within asphalt areas of the site. Individual samples were tested for comprehensive screens and common contaminants reported in Albert Park. None of the concentrations reported for analytes tested exceeded the residential criteria for onsite use. As such the site is considered to be suitable for continued use for recreation purposes.
- 6.4 By complying with legislation, policy and creating reasonable provision for service authorities, there is no legal risk associated with changing the function of Moubray Street.

7. FINANCIAL IMPACT

- 7.1 The project was initially funded as part of the 21/22 portfolio to deliver a basic design improving access and increasing greening. Council had allocated \$500,000 for the project, with 21/22 design and 22/23 delivery.
- 7.2 A submission has been made to Department of Environment Land Water and Planning (DELWP) to transfer \$1.3 million of Local Parks Program Funding from Cobden Street Pocket Park project to Moubray Street Community Park.
- 7.3 The proposed discontinuance of the Road has no detrimental financial implications.

8. ENVIRONMENTAL IMPACT

- 8.1 Strategies to reduce the impacts of urban heat include reduction in greenhouse gas emissions, increased permeable surfaces, increased vegetation and green spaces.
- 8.2 Incorporation of Water Sensitive Urban Design (WSUD) treatment zones to irrigate planting harvested from permeable paving area has been incorporated in the design.

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 project had broad community support, as evident through the previous consultation processes undertaken the initial establishment of the trial Pop-Up Park in 2013.
- 9.3 Well-designed public spaces have economic benefits and help facilitate the economic recovery from the COVID-19 pandemic.
- 9.4 Public space contributes to the liveability of our City and defines our unique sense of identity and place. It is open and accessible to people. It is where we meet our friends, exercise, play sport and relax and is essential to our physical and mental well-being.
- 9.5 The project will provide additional open space and align with Council's vision to create a well-connected network of public spaces for all people that nurture and support the



health, wellbeing, social connection, creative expressions, economy and environment of our community.

- 9.6 Furthermore, Moubray Street Community Park will offer improved access and circulation throughout the reserve by providing upgraded walking paths and safer opportunities to access the park by more users

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Transitioning the temporary road closure for the Moubray Street Community Park into a permanent public space aligns with the key moves of Council's new Places for People: Public Space Strategy 2022 – 2032 to repurpose road space to create more useable public spaces, ensuring our community is within a short, easy and safe walking distance to public space.

10.2 Council Plan – Liveable Port Phillip

- Strategic Objective – Port Phillip is a great place to live, where our community has access to high quality public spaces, development and growth are well managed, and it is safer and easy to connect and travel within.
- What we will work towards (our four-year strategies) – Port Phillip is safer with liveable streets and public spaces for people of all ages and abilities to enjoy.
- We will provide – Access to upgraded, expanded and well-maintained public and outdoor spaces for people of all ages and abilities to visit, in line with our 10-year Public Space Strategy (once adopted by Council), prioritised within available budgets each year
- We will facilitate and advocate for – The best possible public space outcomes that support community health and wellbeing, through infrastructure projects undertaken in our City by other levels of government and stakeholders.

10.3 Council Plan – Sustainable Port Phillip

- Strategic Objective – Port Phillip has a sustainable future, where our environmentally aware and active community benefits from living in a bayside city that is greener, cooler, cleaner and climate resilient. The importance of action in this area is emphasised by Council declaring a Climate Emergency in 2019.
- What we will work towards (our four-year strategies) – Port Phillip has cleaner streets, parks, foreshore areas and waterways where biodiversity flourishes.
- We will provide – Urban forests to increase tree canopy, vegetation, greening and biodiversity and reduce urban heat, in line with Council's Greening Port Phillip and Act and Adapt Strategies prioritised within available budgets each year.
- We will provide – Increased permeability of ground surfaces across public streets and in our public spaces as well as examining ways to support greater permeability on private property.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Before proceeding with the proposed discontinuance of the Road, Council must give public notice of such 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 on or around 1 October 2022:

- 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.
- 11.1.4 It is anticipated that officers will finalise the road discontinuance process and park design by February 2023.
- 11.1.5 It is anticipated that construction of the Moubray Street Community Park will commence in April 2023.

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 proposed discontinuance of these Roads 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 of all or any part of the Roads or to reject the proposal in entirety.
- 11.2.5 If the Roads are discontinued, Council must publish a notice in the Government Gazette and undertake the process and attend to transfer the land to Council title.
- 11.2.6 Information about this project will be available on Council's website, along with information about how to sign up for updates on the project's process.
- 11.2.7 Additionally, a project consultation page will be created on Council's Have Your Say website, to access information and to support our community to make a submission as part of the road discontinuance process

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

Nil