



**14.2** PROPOSED DISCONTINUANCE AND SALE OF ROAD  
ABUTTING 24 DUNDAS PLACE, ALBERT PARK

**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 24 Dundas Place, Albert Park, being part of the land contained in Certificate of Title Volume 210 Folio 859 and shown as lot '1' on the Title Plan TP 9656713P 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 24 Dundas Place, Albert Park (**24 Dundas Place**).

**2. EXECUTIVE SUMMARY**

2.1 The Road is approximately 6 square metres in area and abuts 24 Dundas Place.

2.2 The Road is:

2.2.1 enclosed within the fenced boundaries of 24 Dundas Place; and

2.2.2 not currently available for public use.

2.3 The owner of 24 Dundas Place (**Owner**) has requested that Council discontinues the Road and sells the Road to them.

2.4 At its meeting on 7 August 2019, Council resolved to:

2.4.1 remove the Road from Council's Register of Public Roads; and

2.4.2 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.

2.5 Council did not receive any submissions in response to the public notice.

2.6 Council is now in a position to consider whether to discontinue and sell the Road to the Owner.



### 3. RECOMMENDATION

That Council:

- 3.1 Having considered that there were no submissions in response to the public notice regarding Council's proposal to discontinue the road shown as lot '1' on the Title Plan TP 9656713P attached as Attachment 1 to this report (**Road**), being part of the land contained in Certificate of Title Volume 210 Folio 859:
  - 3.1.1 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;
  - 3.1.2 resolves to sell the discontinued Road, for the market value of \$48,000 plus GST, to the owner of 24 Dundas Place, Albert Park (**24 Dundas Place**);
  - 3.1.3 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;
  - 3.1.4 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*;
  - 3.1.5 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 24 Dundas Place; and
  - 3.1.6 directs that the owner of 24 Dundas Place be required to consolidate the title to the discontinued Road with the title to 24 Dundas Place within 12 months of the date of transfer of the discontinued Road.

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 The Road, shown delineated red on the locality plan attached as Attachment 2 (**Locality Plan**), abuts 24 Dundas Place being the whole of the land contained in Certificate of Title Volume 11890 Folio 658 and shown delineated green 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 Road is currently fenced into the Owner's land and has been fenced in for many years.
- 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 known to title as a 'road', as shown on the registered title plan for the Road, being no. TP873873C attached as Attachment 3. The Road is therefore a 'road' for the purposes of the Act. Council has statutory power to consider discontinuing the Road.
- 4.6 It is considered that the Road is not reasonably required for public use as the Road is:
- 4.6.1 enclosed within the fenced boundaries of 24 Dundas Place; and
  - 4.6.2 not open and not available for public use.
- 4.7 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 Owner's land within 12 months of the date of transfer of the discontinued Road to the Owner, at the Owner's expense.

### **Site Inspection**

- 4.9 A site inspection of the Road was conducted by Millar Merrigan Land Development Consultants on 3 October 2018. The site inspection report notes that:
- 4.9.1 the Road is unconstructed as a road;
  - 4.9.2 the Road is enclosed within a brick wall at the boundary of the Owner's land;
  - 4.9.3 access to the Road is only available through the Owner's land; and
  - 4.9.4 the Road is not open and is not available for public use.
- 4.10 A copy of the site inspection report is attached as Attachment 4 to this report.

### **Alternative Uses**

- 4.11 It is considered that the Road is not suitable for any alternative use such as Public Open Space or other community use as it is fully enclosed and unconstructed.

## **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:

# ORDINARY MEETING OF COUNCIL 19 FEBRUARY 2020



- 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's Assets Team advised that Council has no assets in or above the Road and that it has no objection to the proposed discontinuance of the Road.
- 5.3 Relevant Council departments have been notified by way of internal referral.
- 5.4 Multinet advised that it has no assets in or above the Road and no objection to the proposed discontinuance of the Road.
- 5.5 Optus advised that it has no assets in or above the Road.
- 5.6 Melbourne Water and CitiPower advised that they have no objection to the proposed discontinuance of the Road.
- 5.7 In a letter dated 7 July 2018, Telstra advised that it has no assets in the near vicinity of the Road, and would not object to the discontinuance of the Road provided that the Owner calls 'Dial Before You Dig' before carrying out works in the vicinity of the Road.
- 5.8 In a letter dated 15 August 2018, South East Water advised 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, in the event that after the discontinuance the sewer falls within the title to the Owner's land. As the sewer main does not fall within the Road, no easement was required in favour of South East Water.

## **Public Notice**

- 5.9 Council has notified the community of the Proposal through a public notice in the Port Phillip Leader newspaper on 20 August 2019, inviting submissions in accordance with section 223 of the Act, with a deadline for submissions of 17 September 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 Discontinuance and Sale of Roads Policy (**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 in accordance 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 six square metres, equating to \$48,000 plus GST.
- 7.3 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.

## 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, the proceeds from the proposed 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. As no submissions have been 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.

## 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 TP 9656713P
2. Locality Plan
3. Title Plan 873873C
4. Site Inspection Report