



14.1 PROPOSED DISCONTINUANCE OF PART OF THE ROAD
PART R2975 BETWEEN 17 COVENTRY PLACE AND 378
COVENTRY STREET, SOUTH MELBOURNE

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

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1. PURPOSE

- 1.1 To consider whether the road between 17 Coventry Place and 378 Coventry Street, South Melbourne, part R2975 that is part of the land contained in Memorial Book X Number 653 (**Road**), and shown as Lot 1 and Lot 2 on the title plan TP 954315P (a copy of which is attached as Attachment 1 to this report) (**Title Plan**) should be discontinued pursuant to the *Local Government Act 1989 (Vic)* (**Act**) and sold to the owners of 17 Coventry Place and 378 Coventry Street, South Melbourne.

2. EXECUTIVE SUMMARY

- 2.1 Council had previously considered a proposal to discontinue and sell the Road. At its meeting on 6 September 2017, Council resolved not to proceed with that proposal having considered an objection from the owner of the adjoining property at 376 Coventry Street, South Melbourne (**Adjoining Owner**). The Adjoining Owner has confirmed it no longer objects to Council discontinuing and selling the Road and has provided consent to the proposal.
- 2.2 The owners of the following properties have requested that Council recommences the statutory procedures to consider discontinuing the Road:
- 2.2.1 378 Coventry Street, South Melbourne, being the land contained in certificate of title volume 5261 folio 107 (**378 Coventry Street**); and
- 2.2.2 17 Coventry Place, South Melbourne, being the land contained in certificate of title volume 8207 folio 179 (**17 Coventry Place**), (together the **Owners**) and for that Road shown as:
- 2.2.3 Lot 1 on the Title Plan be sold to the owners of 378 Coventry Street; and
- 2.2.4 Lot 2 on the Title Plan be sold to the owners of 17 Coventry Place (the **Proposal**).
- 2.3 The Road is approximately 18 square metres and is located between 378 Coventry Street and 17 Coventry Place.
- 2.4 The Road is shown on title as a 'road' in the general law search attached to this report as Attachment 3.
- 2.5 The Road is part of laneway R2975 which is listed on Council's Register of Public Roads.
- 2.6 The Road:
- 2.6.1 does not provide vehicular access to any property; and
- 2.6.2 is not required for public access to the adjoining properties.
- 2.7 At its meeting on 18 November 2020, Council resolved to:



- 2.7.1 remove the Road from Council's Register of Public Roads; and
- 2.7.2 recommence 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 Owners.
- 2.8 There were no submissions in response to the public notice regarding Council's proposal to discontinue the Road.
- 2.9 Council is now in a position to consider whether to discontinue and sell the Road to the Owners.

3. RECOMMENDATION

That Council, having considered that there were no submissions in response to the public notice regarding Council's proposal to discontinue the road between 17 Coventry Place and 378 Coventry Street, South Melbourne, part of R2975 that is part of the land contained in Memorial Book X Number 653 (**Road**), and shown as Lot 1 and Lot 2 on the title plan attached as Attachment 1 to this report (**Title Plan**):

- 3.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use as:
 - 3.1.1 there is no evidence that the Road is used for public purposes;
 - 3.1.2 the Road is not required for public access; and
 - 3.1.3 the Road does not provide vehicular access to any property.
- 3.2 resolves to sell the discontinued Road, for the market value of \$63,000 plus GST (i.e. \$31,500 plus GST from each abutting owner), that part of the Road shown as:
 - 3.2.1 Lot 1 on the Title Plan to the owners of 378 Coventry Street, South Melbourne; and
 - 3.2.2 Lot 2 on the Title Plan to the owners of 17 Coventry Place, South Melbourne.
- 3.3 notes that the proceeds from the sale will go into Council's Strategy Property Reserves used to support the acquisition and development of the property portfolio;
- 3.4 notes that the owners of 378 Coventry Street, South Melbourne have agreed to purchase the bluestone pitchers within the Road, the value of which has been assessed by Council Asset Management Team to be \$800 plus GST;
- 3.5 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*;
- 3.6 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 owners of 17 Coventry Place and 378 Coventry Street, South Melbourne, respectively; and
- 3.7 directs that the owners of 17 Coventry Place and 378 Coventry Street, South Melbourne be required to consolidate the titles to the discontinued Road with the titles to the abutting properties of the owners within 12 months of the date of the transfer of the discontinued Road.



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 that is a right of way or a laneway is still required for access or other strategic purposes and should remain open to the public. However, Council may support the discontinuance and sale of a road within its municipality if it is considered that such road discontinuance and sale is in the best interest of the wider community.
- 4.3 Unless the subject road is on Crown land, the land in the road vests in Council and Council can subsequently sell the land from the discontinued road or retain it for municipal purposes.
- 4.4 If the road 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 Act 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 Council had previously considered a proposal to discontinue and sell the Road. At its meeting on 6 September 2017, Council resolved not to proceed with that proposal having considered an objection from the Adjoining Owner. The Adjoining Owner has confirmed it no longer objects to Council discontinuing and selling the Road and has provided consent to the proposal.
- 4.8 The owners of 378 Coventry Street and 17 Coventry Place have requested that Council recommences the statutory procedures to consider discontinuing the Road and for that Road shown as:
 - 4.8.1 Lot 1 on the Title Plan be sold to the owners of 378 Coventry Street; and
 - 4.8.2 Lot 2 on the Title Plan be sold to the owners of 17 Coventry Place.
- 4.9 At its meeting on 18 November 2020, Council resolved to:
 - 4.9.1 remove the Road from Council's Register of Public Roads; and
 - 4.9.2 recommence 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 Owners.

Road

- 4.10 The Road is shown delineated in red on the locality plan attached as Attachment 2 (**Locality Plan**) and abuts:
 - 4.10.1 378 Coventry Street, shown delineated in green on the Locality Plan; and
 - 4.10.2 17 Coventry Place, shown delineated in blue on the Locality Plan.
- 4.11 The Road is approximately 18 square metres and is located between 378 Coventry Street and 17 Coventry Place.



- 4.12 The Road is part of laneway R2975 which is listed on Council's Register of Public Roads.
- 4.13 The Road is:
- shown as a 'road', registered in the name of the original subdivider in the general law search attached to this report as Attachment 3; and
 - constructed as a road.
- 4.14 The Road is therefore a 'road' for the purposes of the Act.
- 4.15 Council has statutory power to consider discontinuing the Road.
- 4.16 If the Road is discontinued, the Road will vest in Council.
- 4.17 A site inspection of the Road was conducted by Kirkpatrick & Webber on 4 September 2016. The site inspection report notes that:
- the Road is open and available for use by pedestrian traffic, however, there is no evidence that the Road is used for public purposes;
 - the Road is constructed of bluestone;
 - the Road does not provide vehicular access to any property; and
 - the Road is not required for public access.
- 4.18 A copy of the site inspection report is attached as Attachment 4 to this report.
- 4.19 The Road is made up of bluestone pitchers which Council's Asset Management Team has confirmed to be currently worth a total of \$800 plus GST for the blocks contained within the Road.
- 4.20 Any material in the road proposed to be discontinued that is of value to Council must be purchased by the purchaser at time of sale at the current market value of such materials under Council's Policy.
- 4.21 The Owners may either purchase the bluestone pitchers within the Road at market value or reimburse Council's costs incurred in removing the bluestone pitchers from the Road.
- 4.22 The owners of 378 Coventry Street have agreed to purchase the bluestone pitchers for \$800 plus GST.
- 4.23 The Owners have agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value of the respective portions of the discontinued Road if transferred to the Owners.

Analysis

- 4.24 It is considered that the Road is no longer reasonably required for general public use as:
- there is no evidence that the Road is used for public purposes;
 - the Road is not required for public access; and
 - the Road does not provide vehicular access to any property.



- 4.25 Given the small size of the Road, it is not considered a development site in its own right and would need to be consolidated into an accompanying parcel to have development value.
- 4.26 Similarly, the Road is not considered an ideal area for public open space due to its size and location.
- 4.27 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.
- 4.28 The Proposal will enable the land in the Road to be re-purposed with the proceeds from the sale going into Council's Strategic Property Reserves to be used to support the acquisition and development of the property portfolio.
- 4.29 If the Road is discontinued and sold to the Owners, Council will require the Owners to consolidate the titles to the discontinued Road with the titles to their respective abutting properties within 12 months of the date of transfer of the Road to the Owners, at the Owners' expense.
- 4.30 If the Road is subsequently discontinued, the Road is proposed to be sold to each of the Owners for market value currently valued at \$63,000 plus GST (i.e. \$31,500 plus GST each). In addition, the cost for purchasing the bluestone pitchers within the Road will be borne by the owners of 378 Coventry Street, the value of which has been assessed by Council Asset Management team to be \$800 plus GST.

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 Road, which should be saved under section 207C of the Act:
- Council;
 - South East Water;
 - Melbourne Water;
 - CitiPower;
 - Multinet;
 - Telstra; and
 - Optus.
- 5.2 Council Asset Management team has advised it has no objection to the Proposal, provided that the Owners, in accordance with the Council's Policy regarding the bluestone pavers either:
- 5.2.1 purchase the bluestone pitchers within the Road at market value assessed at \$800 plus GST; or
- 5.2.2 reimburse Council's costs incurred in removing the bluestone pitchers from the Road.
- 5.3 The owners of 378 Coventry Street have agreed to purchase the bluestone pitchers within the Road for \$800 plus GST.



- 5.4 Other relevant internal Council teams have been consulted and no one has objected to the Proposal.
- 5.5 Melbourne Water, CitiPower, Telstra and Optus have advised that they have no assets in or above the Road and no objection to the Proposal.
- 5.6 South East Water has advised that it has assets in the Road and requires a suitably sized easement in its favour over the existing 100mm sewer main located in the Road.
- 5.7 Comdain has advised that Multinet Gas has assets in the Road and requires a suitably sized easement in favour of Multinet Gas over the existing low-pressure polyethylene mains located in the Road.
- 5.8 An easement pursuant to section 207C of the Act, shown marked 'E-1' on the Title Plan, is to be recorded over the whole of the Road in favour of South East Water and Multinet Gas.
- 5.9 Council has notified the community of the Proposal through a public notice in The Age on 25 January 2021, inviting submissions in accordance with section 223 of the Act, with a deadline of submissions of 22 February 2021. No submissions were received.

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 Owners have agreed to pay Council's costs and disbursements associated with the proposed discontinuance of the Road, together with the market value (plus GST) for the transfer of the discontinued Road to the Owner.
- 7.2 The market valuation of the land in the Road undertaken in November 2019 is \$3,500 per square metre plus GST. This multiplied by 18 square metres totals a purchase price of \$63,000 plus GST.
- 7.3 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.
- 7.4 Under section 189 of the Act, Council must obtain a valuation of land within 6 months prior to Council's sale of that land. The Act does not require Council to sell the land at that value, but the Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land dated June 2009 provides that Council should not sell the land at less than market value. Accordingly, Council is not precluded from selling the Road at the valuation it sought in 2019.
- 7.5 In accordance with Council's Policy and previous sales of roads, the value attributed to the land in the Road is based on the following assumptions:
 - full value of the land is applicable to the Road as though it is consolidated with the Owners' respective properties;
 - no discount is applicable to the full land value due to the limited purchasing market of the Road;



- the Road is not valued on the “before and after” method but is instead based on the “street land value rate” of the consolidated site assuming the Road is consolidated with the Owners’ respective properties.

7.6 The Road is made up of bluestone pitchers which Council Asset Management team confirmed to be currently worth a total of \$800 plus GST for the blocks contained within the Road.

7.7 The owners of 378 Coventry Street have agreed to purchase the bluestone pitchers for \$800 plus GST.

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 Road 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 proposed discontinuance and sale 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 It 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. Having considered that no submissions were received, Council may now determine whether to discontinue and sell the Road.

11.2.2 The Owners will be advised of the final Council decision and the reasons for it within 5 days of the Council meeting.



MEETING OF THE PORT PHILLIP CITY COUNCIL 19 MAY 2021

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. General Law Search of the Road
4. Site Inspection Report