

MEETING OF THE PORT PHILLIP CITY COUNCIL 20 JULY 2022



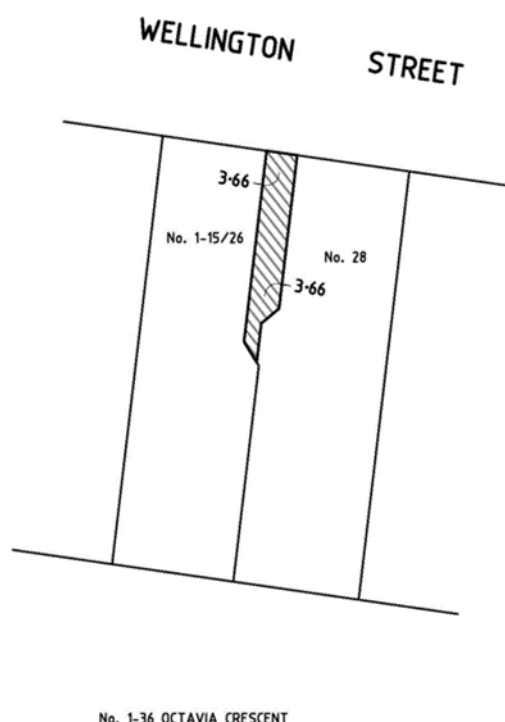
13.3 PROPOSED DISCONTINUANCE AND SALE OF ROAD ABUTTING 26 AND 28 WELLINGTON STREET ST KILDA

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

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1. PURPOSE

- 1.1 This report seeks Council's approval to consider whether the road abutting 26 and 28 Wellington Street, St Kilda, known as laneway R3723 being the land contained in Memorial Book 22 Number 809 and Memorial Book 298 Number 450 (**Road**), shown as lot 1 on the title plan attached as Attachment 1 (**Title Plan**) to this report, and shown hatched on the screenshot below, should be discontinued pursuant to the *Local Government Act 1989* (Vic) (**Act**) and sold to Homes Victoria, the owner of the adjoining property (**Adjoining Owner**) at 28 Wellington Street, St Kilda (**28 Wellington Street**) for a nominal amount of \$1 plus legal fees.



2. EXECUTIVE SUMMARY

- 2.1 The Road is approximately 79 square metres and located between 26 and 28 Wellington Street, St Kilda.



- 2.2 The Road is shown on title as a 'road' in the two general law searches attached to this report as Attachment 2 (**Old Law Conveyances**).
- 2.3 The Road is laneway R3723 which is listed on Council's Register of Public Roads (**Register**).
- 2.4 The Road is constructed in concrete and used for pedestrian access to several units at 28 Wellington Street as well as vehicle access to several car spaces at the rear of that property. The abutting property at 26 Wellington Street, St Kilda (**26 Wellington Street**) does not currently use the Road for access.
- 2.5 The Road:
- 2.5.1 does not provide vehicular or pedestrian access to any property other than that of the Adjoining Owner; and
- 2.5.2 is not required for public access to adjoining properties.
- 2.6 St Kilda Community Housing Ltd (**St Kilda Community Housing**), with the support of Council and the Adjoining Owner, aims to develop a 26-unit (previously noted as 24) Common Ground facility at 28 Wellington Street, on land owned by the Adjoining Owner. This facility will provide supported housing to accommodate persons listed on the Port Phillip By-Name List, who are homeless and sleeping rough in Port Phillip.
- 2.7 On 2 September 2020, Council endorsed the development of this 26-unit Common Ground facility by committing \$4 million in capital funding from the In Our Backyard Reserve and contributing the Road at a nominal amount to provide space for access and car parking required by the development.
- 2.8 A previous market valuation of \$4,620 (inclusive of GST) per square metre for unencumbered land in the Road and \$935 (inclusive of GST) per square metre for encumbered land in the Road has been obtained. This translates to \$364,980 (inclusive of GST) unencumbered and \$73,865 (inclusive of GST) encumbered.
- 2.9 The land in the Road will be encumbered as recent advice from South East Water has indicated that an easement covering a private spoon drain (regulated by the Victorian Building Authority) is envisaged to be created (but in favour of a property and not South East Water), subject to final agreement with the relevant parties and authorities. The consultants acting on behalf of St Kilda Community Housing are, however, of the view that the creation of the appropriate easement can occur once a new title is created i.e. upon consolidation of the titles to the Road (once discontinued) and 28 Wellington Street.
- 2.10 At its meeting on 6 April 2022, Council resolved to:
- remove the Road from the Register; and
 - 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 Adjoining Owner for a nominal amount of \$1 plus legal fees.
- 2.11 Council did not receive any submissions in response to the public notice.
- 2.12 Officers recommend that Council discontinues the Road and sells it to the Adjoining Owner, for a nominal amount of \$1 plus legal fees as the Road is considered to not be reasonably required for public use, for the reasons set out in the report.



3. RECOMMENDATION

That Council having considered that there were no submissions in response to the public notice regarding Council's proposal to discontinue and sell the road abutting 26 and 28 Wellington Street, St Kilda, known as laneway R3723, being the land contained in Memorial Book 22 Number 809 and Memorial Book 298 Number 450 (Road):

- 3.1 resolves to discontinue the Road as it considers that the Road is not reasonably required for public use for the reasons set out in the report;
- 3.2 resolves to sell the discontinued Road to Homes Victoria, the owner of the adjoining property (Adjoining Owner) at 28 Wellington Street, St Kilda for a nominal amount of \$1 plus legal fees;
- 3.3 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*;
- 3.4 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 Adjoining Owner;
- 3.5 directs that any easements, rights or interests required to be created or saved over the Road by any public authority be done so and not affected by the discontinuance and sale of the Road; and
- 3.6 directs that the Adjoining Owner be required to consolidate the title to the discontinued Road with the title to the Adjoining Owner's property 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 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**).



Road

- 4.6 The Road has an area of approximately 79 square meters and is shown as lot '1' on the Title Plan.
- 4.7 The Road abuts 26 Wellington Street and 28 Wellington Street.
- 4.8 The Road is shown on title as a road in Memorial Book 22 Number 809 and Memorial Book 298 Number 450, as per the Old Law Conveyances.
- 4.9 The Road is laneway R3723 which is listed on the Register.
- 4.10 Council has statutory power to consider discontinuing the Road.
- 4.11 If the Road is discontinued, the land will vest in Council free of road status.

Site Inspection

- 4.12 A site inspection of the Road was conducted by Macquarie Local Government Lawyers on 3 November 2021. The inspection noted the following:
 - 4.12.1 the Road is open and available for use for both vehicle and pedestrian traffic;
 - 4.12.2 the Road is constructed in concrete;
 - 4.12.3 the Road comprises the first half of the driveway at 28 Wellington Street and has in the past been used for pedestrian access to the 12 rooming house rooms and associated facilities on site together with vehicle access to the car spaces at the rear of that site;
 - 4.12.4 the abutting property at 26 Wellington Street does not currently use the Road for access as vehicles enter an underground garage from a driveway within the property, as shown in the photograph of the Road in Attachment 3; and
 - 4.12.5 there is no evidence that the Road is used for a public purpose.

Proposal

- 4.13 St Kilda Community Housing, with the support of Council and the Adjoining Owner, aims to develop a 26-unit Common Ground facility at 28 Wellington Street, for the provision of supported housing to accommodate persons listed on the Port Phillip By-Name List, who are homeless and sleeping rough in Port Phillip.
- 4.14 St Kilda Community Housing has requested that Council considers the possible discontinuance and sale of the Road (**Proposal**) to allow for the land to be incorporated into the proposed development.
- 4.15 If the Road is discontinued, the Road will vest in Council.
- 4.16 Once the Road is discontinued, it will be Council's intention to sell the Road to Adjoining Owner.

Consolidation

- 4.17 It will be necessary for the Adjoining Owner to consolidate the title to the discontinued Road with its existing property title as part of the development.



5. CONSULTATION AND STAKEHOLDERS

- 5.1 The owners of the 15 units together with the Owners corporation for 26 Wellington Street have been informed of the Proposal. At this stage no objections have been received.
- 5.2 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 require 'rights' to be 'saved' under section 207C of the Act:
 - Council;
 - South East Water;
 - Melbourne Water;
 - Multinet Gas;
 - CitiPower;
 - Telstra; and
 - Optus.
- 5.3 Council's Asset Management team have advised that Council has no assets in or above the Road and no objection to the Proposal.
- 5.4 Recent advice from South East Water has indicated that an easement covering a private spoon drain (regulated by the Victorian Building Authority) is envisaged to be created (but in favour of a property and not South East Water), subject to final agreement with the relevant parties and authorities. The consultants acting on behalf of St Kilda Community Housing are, however, of the view that the creation of the appropriate easement can occur once a new title is created i.e. upon consolidation of the titles to the Road (once discontinued) and 28 Wellington Street.
- 5.5 The remaining statutory authorities have advised they have no objection to the Proposal as they do not have any assets within the Road.
- 5.6 Council did not receive any submissions to the public notice of the Proposal that was advertised in The Age newspaper on 6 May 2022.
- 5.7 Officers have completed the consultation and notification requirements prescribed under the Act.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Under clause 3 of Schedule 10 of the Act, 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 The Policy ensures that roads reasonably required for public access remain open to the public and those not reasonably required for public use may be discontinued and sold to the adjoining owner(s), subject to Council approval and statutory requirements.

7. FINANCIAL IMPACT

- 7.1 A recent market valuation of \$4,620 (inclusive of GST) per square metre for unencumbered land in the Road and \$935 (inclusive of GST) per square metre for encumbered land in the Road has been obtained. This translates to \$364,980 (inclusive of GST) unencumbered and \$73,865 (inclusive of GST) encumbered.



- 7.2 The land in the Road will be encumbered as an easement covering a private spoon drain is envisaged to be created, subject to final agreement with the relevant parties and authorities.
- 7.3 On 2 September 2020, Council endorsed the development of this 26-unit Common Ground facility by committing \$4 million in capital funding from the In Our Backyard Reserve and contributing the Road at a nominal amount of \$1 plus legal fees to provide space for access and car parking required by the development.
- 7.4 St Kilda Community Housing, on behalf of the Adjoining Owner, will be paying all legal costs incidental to the Proposal.

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 Proposal will enable the land in the Road to be re-purposed.
- 9.3 The Proposal will support the development of a social housing facility within the municipality for the benefit of the community.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The Proposal aligns with the Strategic Direction **Well Governed Port Phillip** and Inclusive Port Phillip.
- 10.2 The Proposal is in accordance with the In Our Backyard Affordable Housing 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 Adjoining Owner will be advised of the final Council decision and the reasons for it within 5 days of the Council meeting.

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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. Title Plan**
- 2. Old Law Conveyances**
- 3. Photo of the Road**