

**Management report to Council****Agenda item 6.1****Higson Lane Proposed Discontinuance****Council****Presenter:** Roger Teale, General Manager Property, Infrastructure and Design**26 September 2023****Purpose and background**

1. The purpose of this report is to:
  - 1.1. Update Council of the outcome of the deferred item 5.4 on the agenda for the Council meeting on 25 August 2020 in relation to the proposal to discontinue and sell a section of Higson Lane, Melbourne (Road).
  - 1.2. Inform Council of an alternative proposal to discontinue and sell part of the Road (Alternative Proposal).
  - 1.3. Seek Council approval to commence a new statutory process pursuant to section 206(1) and clause 3 of Schedule 10 of the *Local Government Act 1989* (LGA 1989) and section 114 of the *Local Government Act 2020* (LGA 2020) to consider the Alternative Proposal.
2. In January 2019, Council received an application from Parasol Investment Company Pty Ltd, the adjoining land owner of 133-135 Flinders Lane (the Applicant) to purchase part of the Road (Current Proposal) to facilitate the Applicant's development.
3. The Current Proposal has an area of approximately 20m<sup>2</sup> and abuts three separate properties at 30 Oliver Lane, 129-131 Flinders Lane and 133-135 Flinders Lane, which use the Road to access their land. A plan of the Road and photos of the Road are included in Attachment 2.
4. Management commenced the relevant statutory process to discontinue and sell the part of the Road including providing a public notice of the Current Proposal in March 2019, offering the opportunity for public submissions. Eleven objections to the Current Proposal were received from adjoining land owners of 30 Oliver Lane and 129-131 Flinders Lane.
5. At the meeting of Council's Submissions (Section 223) Committee (the Committee) on 2 May 2019, the Committee considered a report and made a recommendation to discontinue the part of the Road and sell the land to the Applicant for \$90,000.
6. A report from the Committee was presented at the Council meeting on 25 June 2019. The matter was deferred by Council to its meeting on 19 August 2019, however it was withdrawn from the agenda and did not progress. A copy of the Committee's report to the 25 June 2019 Council meeting together with the management report to the Committee is in Attachment 3.
7. A report relating to the Current Proposal was withdrawn from the Council agenda on 28 March 2023 to allow the Applicant additional time to consider and submit an alternative proposal.

**Key issues**

8. The Road is a declared road on the Council's Register of Public Roads pursuant to the *Road Management Act 2004* (RMA) and under Council's care and management. It is a requirement under the RMA that Council must demonstrate that the Road is no longer reasonably required for general public use in order to remove the road from the Register of Public Roads and progress the discontinuance and sale.
9. The Current Proposal has been further assessed and reviewed to determine whether the relevant part of the Road is still reasonably required for public use, now or in the future. This further assessment was based on governing legislation and policy, including the National Construction Code (NCC), the RMA, Activities Local Law 2019, the Road Discontinuance Policy 2017 and the Road and Reserves Discontinuance and Sale Policy adopted in October 2022.

10. This further assessment has highlighted significant concerns that align with the public submissions and noting:
  - 10.1. existing and competing public and private rights over the Road
  - 10.2. complex access and servicing arrangements
  - 10.3. implications of potential obstruction of existing fire exit, and NCC compliance for fire access and secondary pedestrian access to 30 Oliver Lane
  - 10.4. potential creation of civil conflict relating to maintenance of any gate or fence that may be constructed and maintenance of the enclosed Road if discontinued
  - 10.5. waste management access and storage.
11. It is considered that the part of the Road contained within the Current Proposal is still reasonably required for general public use as management considers its removal will impact on the safe and efficient service and access arrangements, including an emergency exit for the building at 30 Oliver Lane as well as fire emergency services access.
12. Given the highly contested use of the Road, the competition for its purchase, its limited area and constraints and reasonable requirement for use by the general public, the discontinuance and private sale of the Road is not considered to be appropriate at this time and the Road should remain on Council's Register of Public Roads.
13. The Applicant subsequently requested additional time to investigate alternative options addressing the concerns raised through the public submissions and Council officers' concerns for continued pedestrian access for essential fire access purposes.
14. The Applicant has now submitted an alternative proposal for Council to discontinue one half of the portion of the Road the subject of the Current Proposal and sell that half to the Applicant. The other remaining half of the Road would remain a public highway enabling continued pedestrian access to the Road from 30 Oliver Lane. A copy of the Alternative Proposal is in Attachment 4.
15. It is proposed that Council abandons the Current Proposal and commences a new statutory process to consider the Alternative Proposal. At the conclusion of this process and following public engagement, a further report will be presented to Council with recommendations.

### **Recommendation from management**

16. That Council:
  - 16.1. Abandons the proposal (Current Proposal) to discontinue and sell part of Higson Lane, Melbourne (Road), for the reason that the Road is still reasonably required for general public use and is to be retained under Council's care and management.
  - 16.2. Approves the commencement of a new statutory process pursuant to section 206(1) and clause 3 of Schedule 10 of the *Local Government Act 1989* and section 114 of the *Local Government Act 2020* to consider an alternative proposal to discontinue and sell part of the Road to Parasol Investment Company Pty Ltd.
  - 16.3. Requests management notify in writing every person who has lodged a written submission to the Current Proposal of the Council's decision and reasons for its decision.

### **Attachments:**

1. Supporting Attachment (Page 3 of 46)
2. Plan and Photos (Page 4 of 46)
3. Committee Report 2019 (Page 7 of 46)
4. Alternative Proposal (Page 46 of 46)

**Supporting Attachment**

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**Legal**

1. In accordance with sections 189, 206(1) and 223 and clause 3 of Schedule 10 of the LGA 1989 the Current Proposal to discontinue and sell the Road has been the subject of a public submission process.
2. If the recommendation from management is adopted, the Alternative Proposal will be subject to the statutory process under sections 206(1) and 223 and clause 3 of Schedule 10 the LGA 1989 and a proposal to sell the land under section 114 of the LGA 2020 including a community engagement process in accordance with Council's Community Engagement Policy.
3. The decision on whether to discontinue and sell the land rests with Council.

**Finance**

4. The Applicant agreed to purchase the land for \$90,000 (plus GST) pursuant to Council's 2019 market valuation and the Road Discontinuance and Sale Policy and to pay all costs associated with the road discontinuance and sale of land.
5. Should Council approve the commencement to undertake a new statutory process for the Alternative Proposal, a new valuation will be required in accordance with the section 114 of the LGA 2020.
6. A \$30,000 bank guarantee submitted by the Applicant in accordance with the Road Discontinuance application is currently held by Council.

**Conflict of interest**

7. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

**Health and Safety**

8. Significant occupational health and safety issues have been identified in relation to the Current Proposal. These issues related to the safe and efficient service and access arrangements, including an emergency exit for the building at 30 Oliver Lane as well as fire emergency services access.
9. The Alternative Proposal seeks to address these issues.

**Stakeholder consultation**

10. Statutory and community consultation in relation to the Current Proposal have been carried out.
11. Should Council approve the commencement to undertake a new statutory process for the Alternative Proposal, that proposal will be the subject of a community engagement process in accordance with section 223 of the LGA 1989 and Council's Community Engagement Policy.

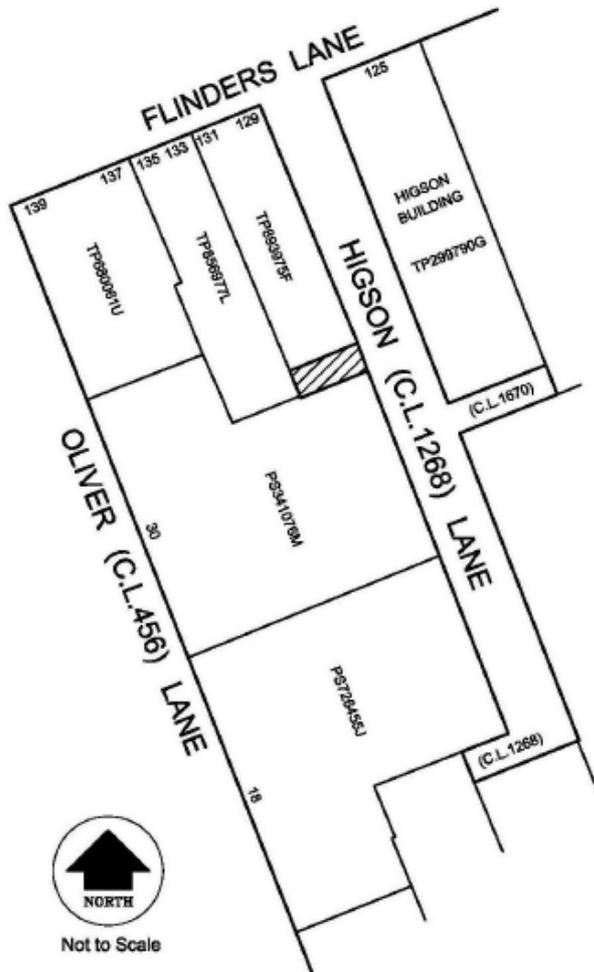
**Relation to Council policy**

12. This report has been prepared in accordance with the Road Discontinuance and Sale Policy 2017 and the Road and Reserves Discontinuance and Sale Policy 2022.

**Environmental sustainability**

13. No environmental sustainability issues or opportunities have been identified with the Current Proposal.

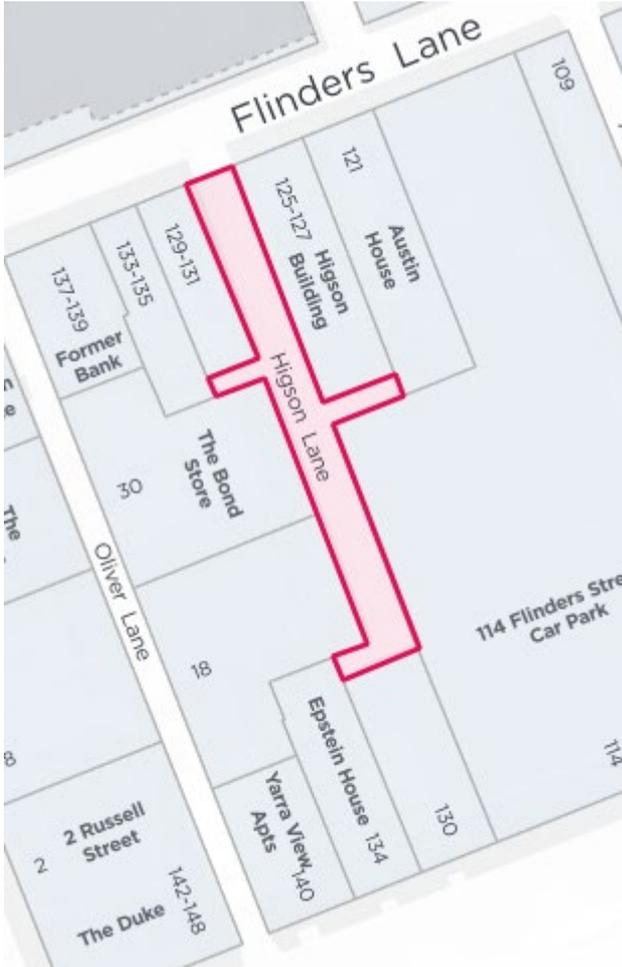
ATTACHMENT 2 – PLAN AND PHOTOS



 Land subject to Discontinuance and Sale  
Approximate area 20m<sup>2</sup>



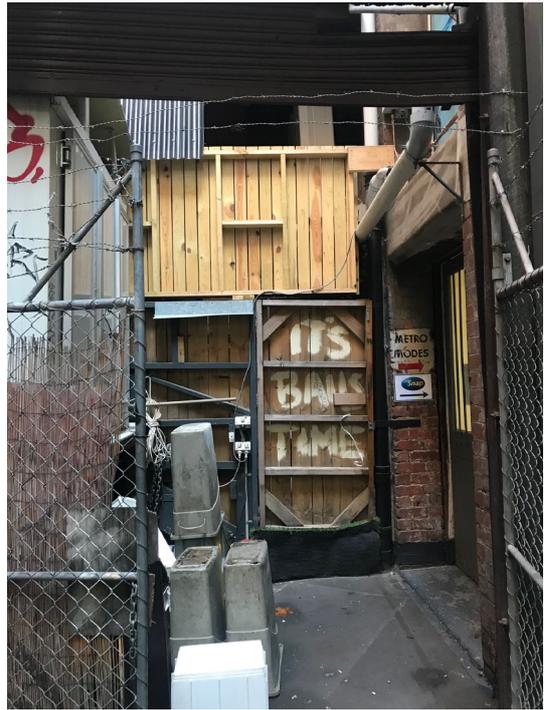
ATTACHMENT 2 – PLAN AND PHOTOS



ATTACHMENT 2 – PLAN AND PHOTOS



Entrance to 133-135 Flinders Lane



Road reserve subject to discontinuance



**Committee report to Council**

Agenda item 5.4

Council

**Proposed discontinuance and sale of part of Higson Lane Melbourne**

25 June 2019

**Committee** Submissions (Section 223)**Presenter** Greg Stevens, Manager Parks, Property and Waterways**Purpose and background**

1. The purpose of this report is to recommend the discontinuance and sale, pursuant to sections 189, 206(1) and 223 and clause 3 of schedule 10 of the *Local Government Act 1989* ('the Act'), of part of Higson Lane, Melbourne (the Road), as shown hatched on the attached plan (see page 4 of the attached report to the Committee).

**Consideration at Committee**

2. At the Submissions (Section 223) Committee meeting on 2 May 2019 the Committee considered the attached report and made the below recommendation for presentation to Council.
3. Arnold Bloch Leibler made a further submission following the meeting and the Committee's resolution. Whilst late and out of time, the submission was distributed to the Committee. No change was made to the original recommendation on the basis it achieved a fair balance between the competing interests.

**Recommendation**

4. That Council:
    - 4.1. Discontinue part of Higson Lane as proposed on the plan in the public notice published in The Age of 27 March 2019 and sell the land (Land) to Parasol Investment Company Pty Ltd (the abutting landowner) for \$90,000 (plus GST), subject to:
      - 4.1.1. easements of passageway and light and air in favour of the abutting proprietaries at 30 Oliver Lane and 129-131 Flinders Lane, to protect access and light and air rights to the rear of those properties;
      - 4.1.2. the Land being consolidated with the land at 133-135 Flinders Lane
      - 4.1.3. an agreement being entered into between the Council and the abutting landowner pursuant to section 173 of the *Planning and Environment Act 1987* and registered on the certificate of title including the Land requiring:
        - 4.1.3.1. the owner keep the Land clean and maintained to a standard commensurate to the rest of Higson Lane, Melbourne
        - 4.1.3.2. an area of at least 1.2 metres in width be made available for the storage of bins by owners and occupiers
        - 4.1.3.3. that should a gate or other barrier be erected affecting entry or egress to the Land, the owner must provide access keys to the owners of the abutting properties at 30 Oliver Lane and 129-131 Flinders Lane,
- for the reasons that:
- 4.1.4. the additional easements and S173 agreement:
    - 4.1.4.1. ensure existing rights of access and to light and air are preserved and address a number of the objections

- 4.1.4.2. recognise the need for the area behind 30 Oliver Lane to be kept free of vehicles and other obstructions to enable egress from the doorway at 30 Oliver Lane
  - 4.1.4.3. give enforceable rights to the owners of 30 Oliver Lane and 129-131 Flinders Lane
  - 4.1.5. in light of the need for the area behind 30 Oliver Lane to be kept free of vehicles and other obstructions, the suggested sale to one of the owners at 30 Oliver Lane is not supported.
- 4.2. Notify in writing every person who has lodged a separate submission of the decision and reasons for the decision.

**Attachment:**

## Management report to Submissions (223) Committee

### Proposed discontinuance and sale of part of Higson Lane, Melbourne

**Presenter:** Leon Wilson, Acting Senior Project Officer Facilities Management

#### Purpose and background

1. This report addresses 11 submissions received to the proposed discontinuance and sale, pursuant to sections 189, 206(1) and 223 and clause 3 of schedule 10 of the *Local Government Act 1989* ('the Act'), of part of Higson Lane ('the Road'), as shown hatched on the attached plan (see Attachment 2).
2. It is proposed to sell the Road to the owner of 133-135 Flinders Lane. Their architect lodged a submission in support of the proposal on the basis of improve safety, amenity and cleanliness.
3. The main points from the other submissions against the proposal are as follows (Attachment 3 has the full submissions):
  - 3.1. Fire escape from the basement car park at 30 Oliver Lane.
  - 3.2. Pedestrian access to the basement of the building at 30 Oliver Lane.
  - 3.3. Maintenance of existing infrastructure on the rear of the abutting buildings.
  - 3.4. Heritage value of the laneway.
  - 3.5. 'Behaviour of Neighbours' not cleaning up rubbish with bins overflowing.
  - 3.6. One of the owners at 30 Oliver Lane has offered to purchase the Road.

#### Key issues

4. A review of the plan of subdivision (see Attachment 2) for 30 Oliver Lane appears to show the lot 16 car park is in front of the doorway which does not comply with the building code, this is the same issue for the pedestrian access through the doorway. The doorway must lead on to common property.
5. The ducts on the property at 30 Oliver Lane which require maintenance are located over the rear of the property at 133-135 Flinders Lane. Permission is required to service these.
6. The Road is not part of a classified laneway under clause 22.20 of the Melbourne Planning Scheme.
7. Various people use the Road for smoking and other unsavoury activities which creates an amenity and safety issue due to the Road being hidden from general view, see photos in Attachment 2.
8. The rear access to the abutting properties can be protected in a variety of ways, these are discussed in the submissions. The alternatives are as follows:
  - 8.1. Abandon the discontinuance and sale application and retain it as a public highway under Council's care and management, if this alternative is supported Higson Lane needs to be declared a public highway to ensure the ongoing status is beyond doubt.
  - 8.2. Sell the Road to the owners' corporation for the property at 30 Oliver Lane with easements of passageway and light and air in favour of the abutting properties at 129-131 and 133-135 Flinders Lane.
  - 8.3. Sell the Road to Parasol Investment Company Pty Ltd with easements of passageway and light and air in favour of the abutting properties at 30 Oliver Lane and 129-131 Flinders Lane.

#### Recommendation from management

9. That the Submissions (Section 223) Committee:
  - 9.1. considers all written submissions in relation to the proposal and hears any person wishing to be heard in support of their submission and then makes a recommendation to Council
  - 9.2. recommends Council notify in writing every person who has lodged a submission of its decision and the reasons for its decision.

#### Attachments:

1. Supporting Attachment (Page 2 of 37)
2. Public Notice and Plan (Page 3 of 37)
3. Submissions (Page 7 of 37)

**Supporting Attachment**

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**Legal**

1. Pursuant to sections 189, 206(1) and 223 and clause 3 of Schedule 10 of the Act, Council has given public notice that it proposes to discontinue and sell the Road.

**Finance**

2. Council's costs associated with managing the application will be met by the applicant. This is regardless of whether the application is successful or not, or if it is withdrawn. These costs include property valuation, general advertising, gazetting of the Road discontinuance in the Government Gazette and associated legal costs.

**Conflict of interest**

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

**Health and Safety**

4. Community Health and Safety: The Road has very little passive surveillance due to its location and aspect raising minor safety concerns for users of the Road.

**Stakeholder consultation**

5. The proposal was given public notice. Overall the consultation involved:
  - 5.1. advertising in the Age on 27 March 2019
  - 5.2. a letter being sent to the owners and occupiers of abutting properties
  - 5.3. the notice was placed on Council's web site
  - 5.4. all Service Authorities were notified of the proposal

**Relation to Council policy**

6. The proposed discontinuance and sale has been assessed under the Road Discontinuance and Sale Policy approved by Council on 30 May 2017.

**Environmental sustainability**

7. This proposal has no significant impact on environmental sustainability.

## **Melbourne City Council**

### **Proposed discontinuance and sale of part of Higson Lane Melbourne**

Notice is given pursuant to sections 189, 206(1) and 223 and clause 3 of schedule 10 of the Local Government Act 1989 (Act) that the Melbourne City Council (Council), proposes to discontinue part of the road known as Higson Lane Melbourne as shown hatched on the plan below, and sell the resulting land to Parasol Investment Company Pty Ltd (the abutting landowner) for \$90,000 plus GST (Proposal).

Any person may make a written submission on the Proposal to the Council. All submissions received by the Council on or before 25 April 2019 will be considered in accordance with section 223(1) of the Act, by the Council's Submissions (Section 223) Committee (Committee).

If a person wishes to be heard in support of their submission they must include the request to be heard in the written submission and this will entitle them to appear in person, or by a person acting on their behalf, before a meeting of the Committee, scheduled to be held on 2 May 2019, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

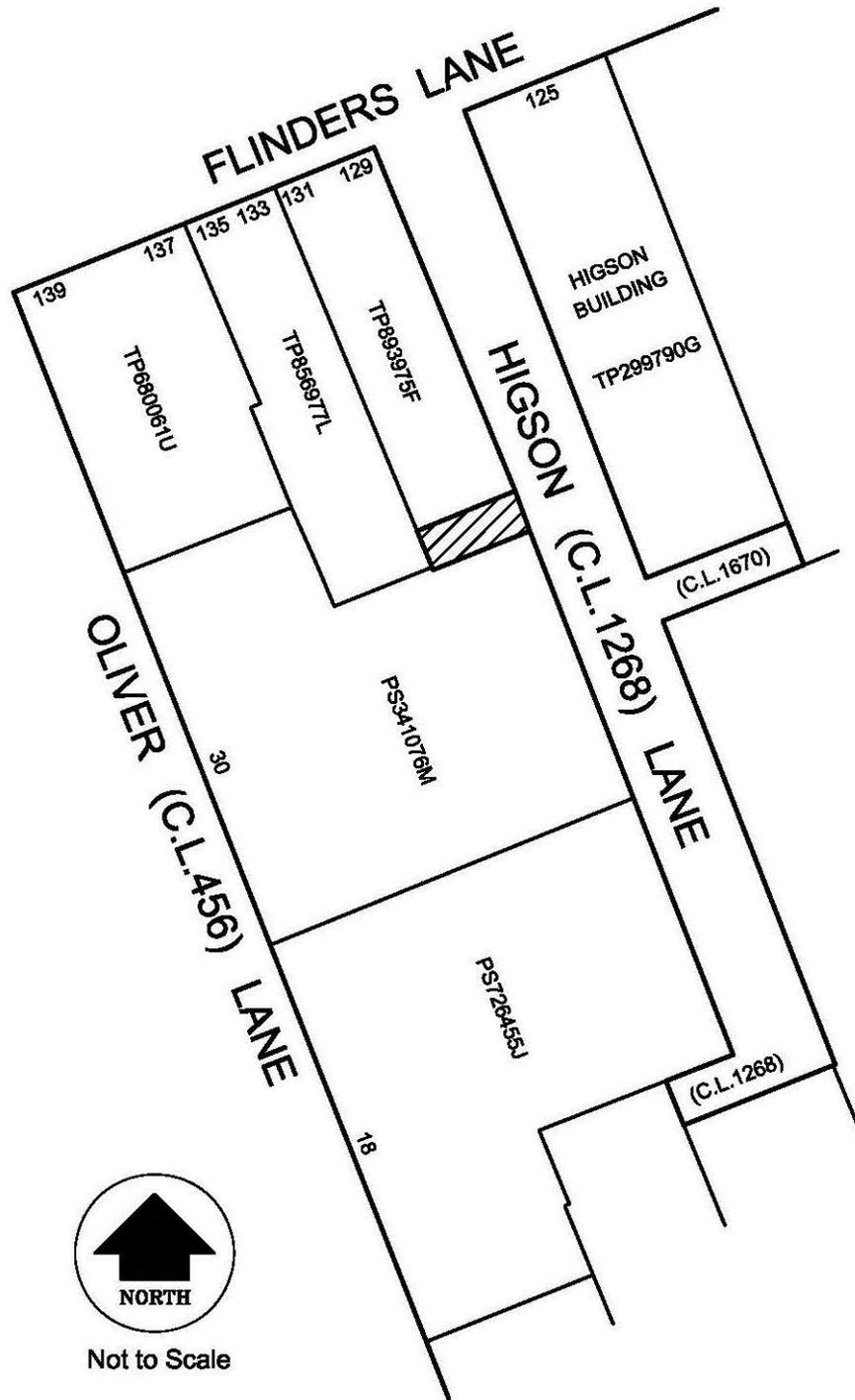
Written submissions should be marked 'Proposed discontinuance and sale of part of Higson Lane' and addressed to the Manager Governance and Legal, Melbourne City Council, GPO Box 1603, Melbourne, 3001. Written submissions can be made via mail, email to [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au) or on-line at <https://comdigital.wufoo.com/forms/rly4bj60tdagsq/>

#### **Written submissions cannot be delivered in person.**

Submissions form part of the public record of the meeting (including any personal information you provide) and will be published on Council's website (accessible worldwide) for an indefinite period. A hard copy will also be made available for inspection by members of the public at Council offices.

If you have any concerns about how Council will use and disclose your personal information, please contact the Council Business team via email at [privacy@melbourne.vic.gov.au](mailto:privacy@melbourne.vic.gov.au)

Plan from Public Notice



Not to Scale



Land subject to Discontinuance and Sale  
Approximate area 20m<sup>2</sup>

**Photos**

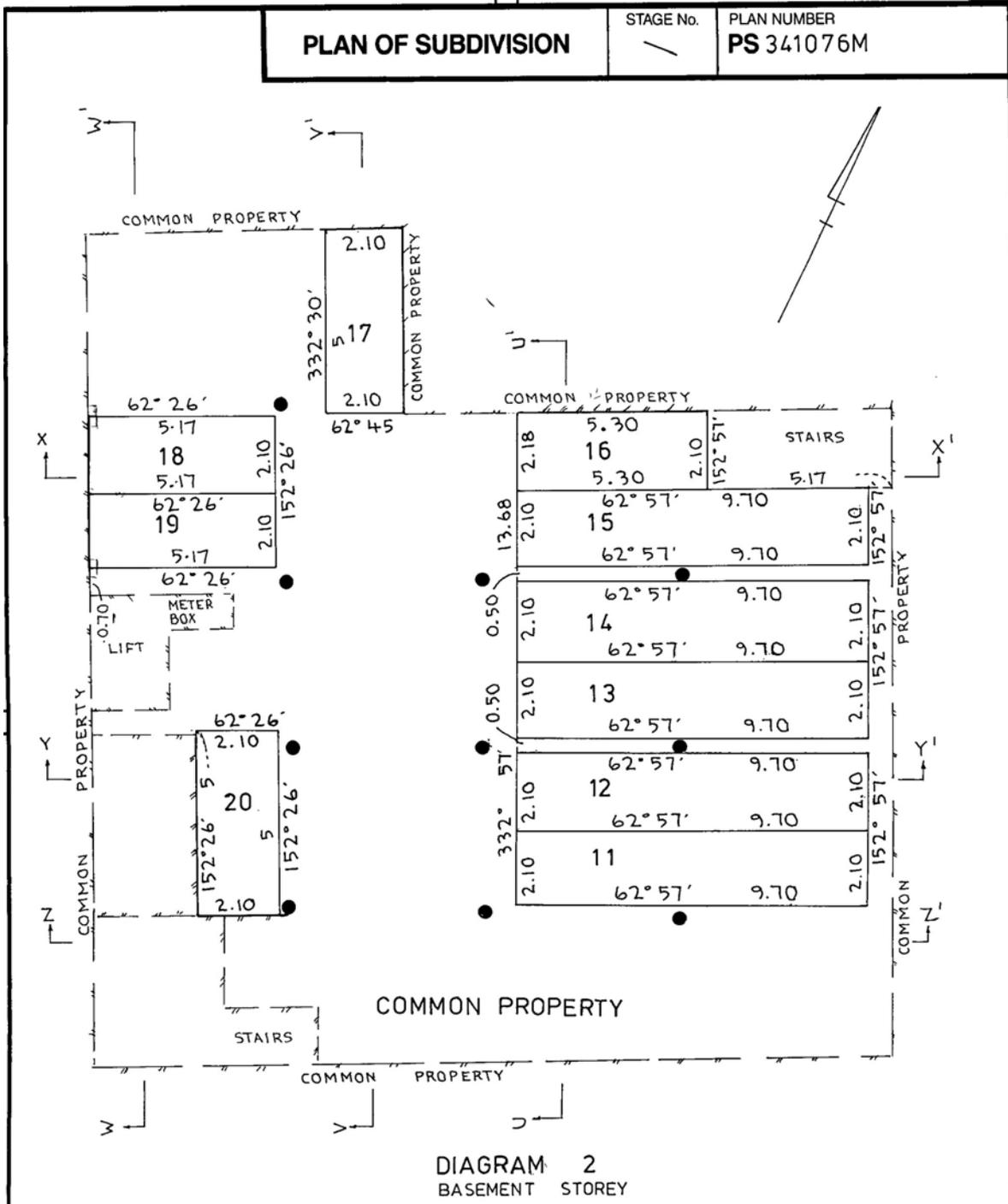


Photo 1 rear of 30 Oliver Lane



Photo 2 rear of  
129-131 Flinders Lane

Extract of Plan of Subdivision for 30 Oliver Lane



Melbourne City Council  
200 Little Collins Street  
Melbourne, VIC 3000

Attachment 3  
Agenda item 5.2  
Submissions (Section 223) Committee  
2 May 2019

Dear Leon,

**RE: 133 Flinders Lane, Melbourne  
Rear Lane**

[REDACTED] has requested I write to you to explain some of the advantages the Council will gain if the property at [REDACTED] was to acquire this small lane leading to Higson Lane onto its title.

1. We all believe the closure of this lane will improve safety to Higson Lane as this small section of lane is badly lit and offers a dark hiding place for persons.
2. The cleanliness of the lane would become the responsibility of [REDACTED] the owner of the 133 Flinders Lane property. At present the area is used by numerous people as a smoking place to which cleanliness of the space seems not to worry these people.

We ask that you consider these positive matters in your deliberation.

Yours Faithfully,

[REDACTED]  
Bruce Henderson

**Bruce Henderson Architects Pty Ltd**

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DANIEL FASCIANI  
MATTHEW BUDD



**BRUCE  
HENDERSON  
ARCHITECTS**

21<sup>st</sup> March 2019

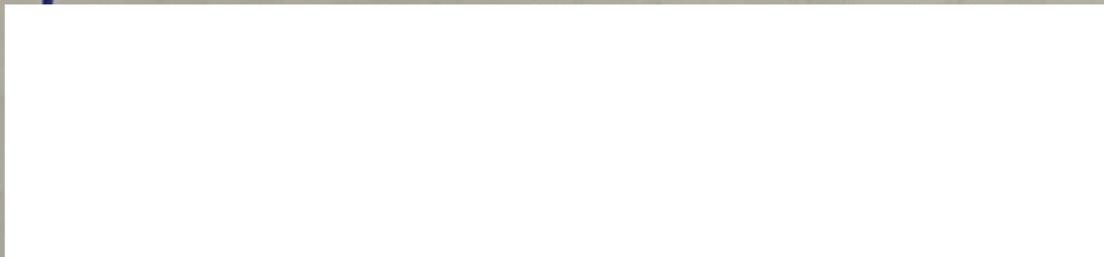
Sam Parasol  
4 Pearson Grove  
Caulfield North, VIC 3161

Dear Sam,

**RE: 133 Flinders Lane, Melbourne  
Fire Door 30 Oliver's Lane**

You will note the doorway from 30 Oliver's Lane which has access to the laneway to the East of your southern end title leading to Higson Lane is not an egress from a fire stair, adjacent.

Yours Sincerely,



Bruce Henderson

**Bruce Henderson Architects Pty Ltd**

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MADISON'S

Bank of N. S. M.

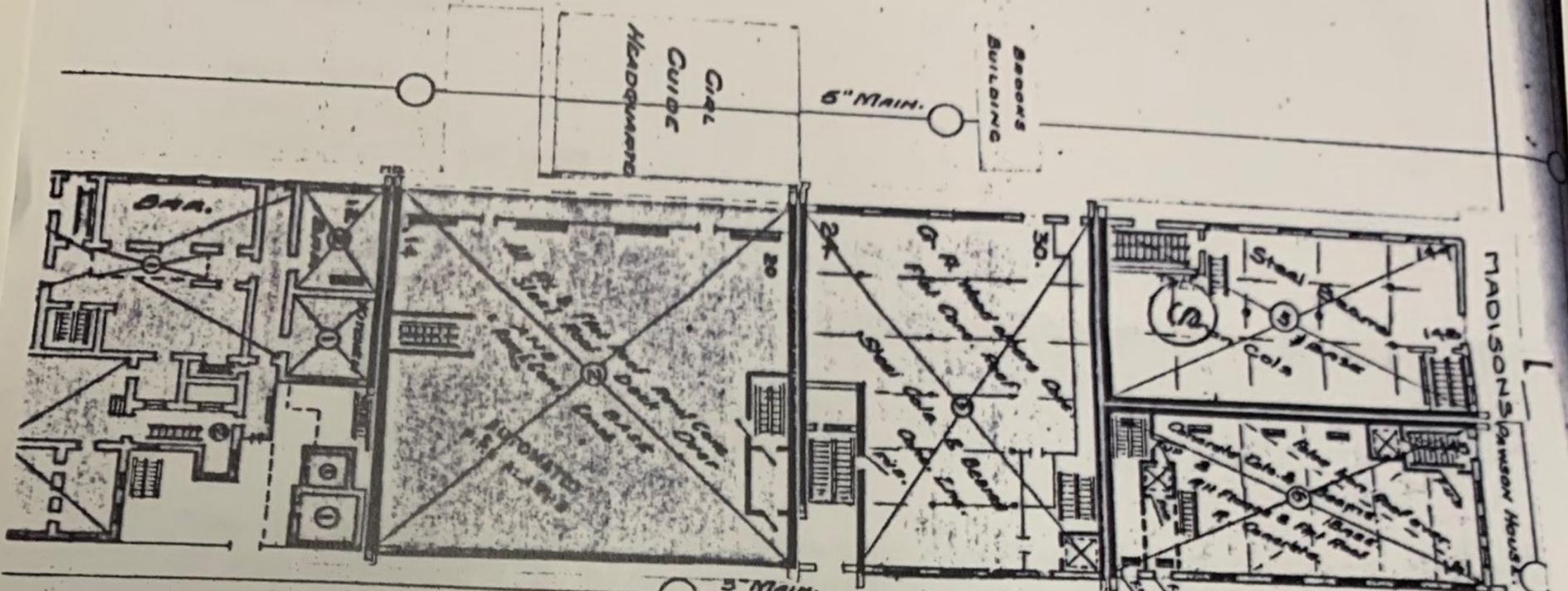
LANE House

OLIVER'S

MADISON

\* This is the plan of the existing.

# RUSSELL

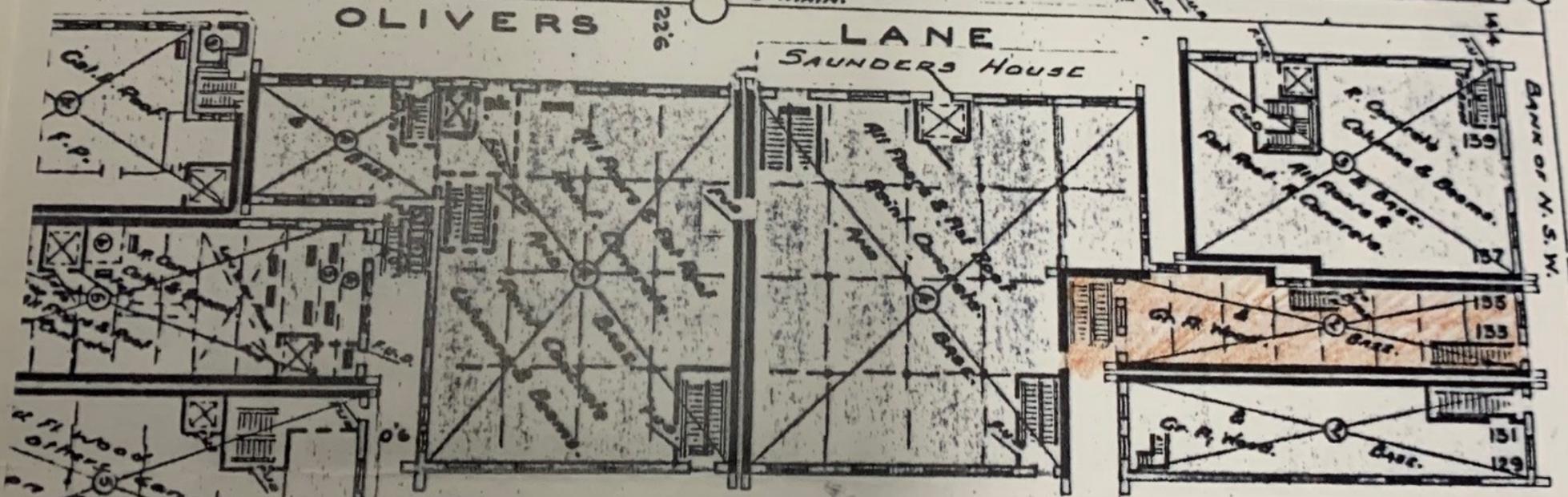


# OLIVERS

226

# LANE

SAUNDERS HOUSE

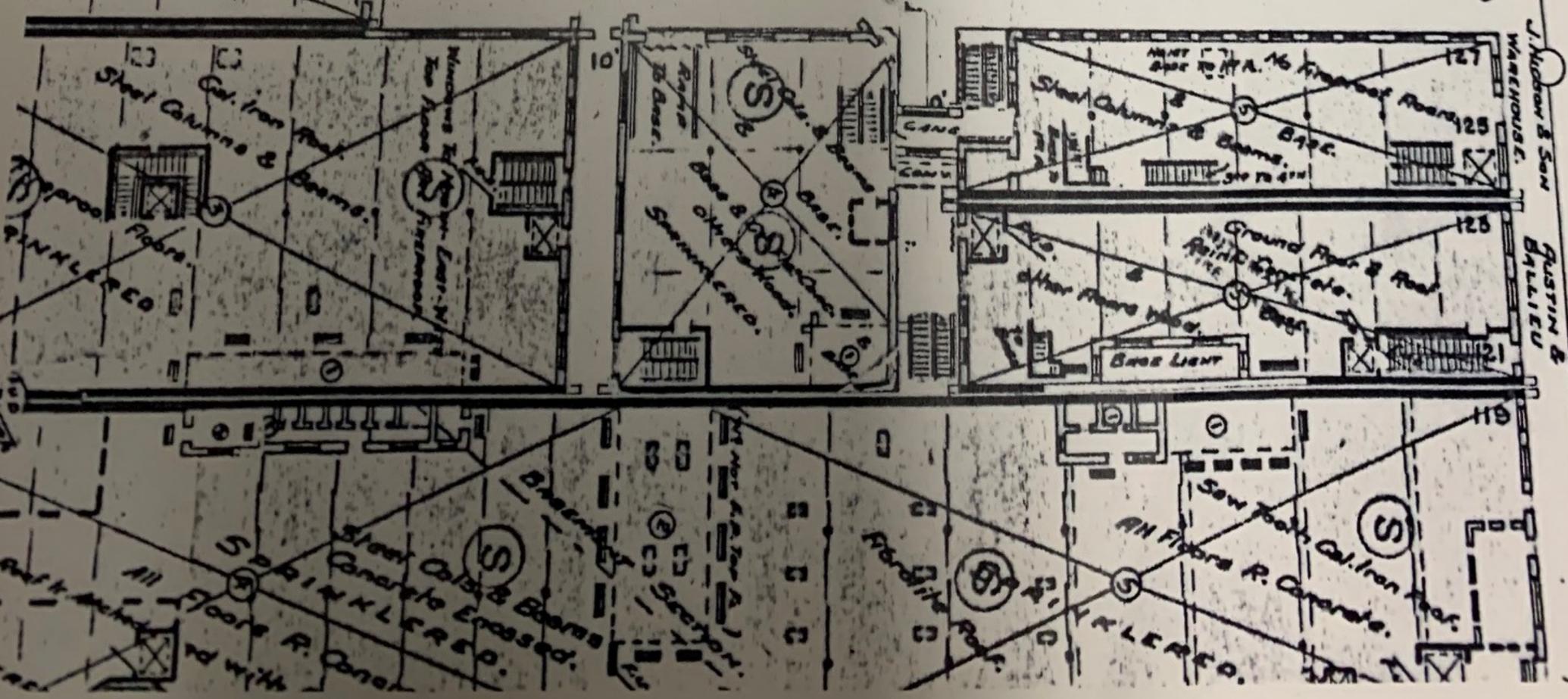


# HIGSON

4" MAIN.

LA.

210



J. GIBSON & SON WAREHOUSE. GUSTIN & BRILLIEN

FLINDERS

# Arnold Bloch Leibler

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18 April 2019

Manager Governance and Legal  
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Melbourne VIC 3001

Your Ref  
Our Ref ATL APT  
File No. 011910371

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Kaitlin Lowdon  
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Stephanie Campbell  
Claire Stubbe  
Stephen Lloyd  
Jonathan Ortnr  
Briely Trollope  
Laura Cochrane  
Dorian Henneron  
Rachel Soh  
Scott Phillips  
Greg Judd  
Ben Friis-O'Toole  
Ely Bishop  
Orley Granot  
Melanie Smith

Dear Sir/Madam

## Objection to Proposed Discontinuance and Sale of Part of Higson Lane, Melbourne

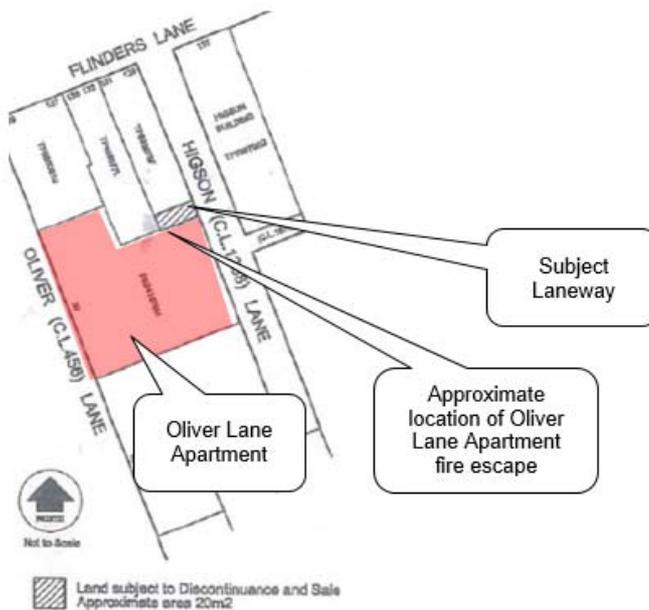
- 1 We act for Mrs Uschi Schwartz, the registered proprietor of **(Oliver Lane Apartment)**. The Oliver Lane Apartment is shaded in red in Figure 1 below and lies immediately south of the part of Higson Lane that is proposed for discontinuation (**Subject Laneway**).
- 2 Our client has serious concerns about the advertised proposal to discontinue and sell the Subject Laneway (**Discontinuation Proposal**) to Parasets No. 2 Pty Ltd (**Applicant**). The Applicant shares the same directors as Parasol Investment Company Pty Ltd (**Parasol**), being the owner of the land at 133-135 Flinders Lane Melbourne VIC 3000 (**133 Flinders Lane**).
- 3 As an immediately adjoining property, the Oliver Lane Apartment is the property most directly affected by the Discontinuation Proposal.
- 4 The purpose of this letter is to confirm our client's objection to the Discontinuation Proposal on the following grounds, which will be further particularised in paragraph 6 below:
  - (a) **Ground 1:** The Oliver Lane Apartment requires use of the Subject Laneway as a fire escape from the basement carpark at the OC Property;
  - (b) **Ground 2:** The Subject Laneway is required for pedestrian-access to the Oliver Lane Apartment's basement and lifts;
  - (c) **Ground 3:** The Subject Laneway is required for the ongoing use and maintenance of existing infrastructure, which services the Oliver Lane Apartment;

- (d) **Ground 4:** The Subject Laneway is poorly maintained and is already being used for waste disposal by the Applicant, despite the Subject Laneway's current legal status as a public asset; and
- (e) **Ground 5:** The privatisation of the Subject Laneway is inconsistent with the urban and heritage character of the area, which is a tourism destination in and of itself.

## Site Context

- 5 The location of the Oliver Lane Apartment, Subject Laneway and fire escape at the Oliver Lane Apartment are marked on Figure 1 below.

**Figure 1**



## Grounds of Objection

- 6 As noted above, our client objects to the Discontinuance Proposal on the following grounds:

### 6.1 **Ground 1: The Oliver Lane Apartment requires use of the Subject Laneway as a fire escape from the basement carpark at the Oliver Lane Apartment**

- (a) The Subject Laneway is the only fire escape route from the Oliver Lane Apartment's basement car park. The door leading to and from the basement car park is located towards the western end of the Subject Laneway as shown in Figure 1 above.
- (b) Loss of the pedestrian access to the Subject Laneway would mean that this fire escape route is no longer available. This in turn could have serious implications for the fire safety of the occupiers of the Oliver Lane Apartment in an emergency. We expect that the loss of this fire escape route would mean that the Oliver Lane Apartment no

longer complied with the relevant Building Code requirements, which would in turn require the apartment owners to undertake capital expenditure to provide a new fire escape route.

- (c) It is entirely unfair for our client and the other apartment owners to have to incur the expense and inconvenience needing to undertake such works – particularly in circumstances where:
- (i) the existing layout of the Oliver Lane Apartment (including the fire escape route) has previously been approved by Council via the planning and building permit application processes; and
  - (ii) there is no community benefit associated with the Proposed Discontinuance.

## **6.2 Ground 2: The Subject Laneway is required for pedestrian access to the Oliver Lane Apartment's basement and lifts**

- (a) Apart from being used as a fire escape route, the door leading to the Subject Laneway is the only access point from Higson Lane to the Oliver Lane Apartment's basement lift and car park.
- (b) We note that the importance of this access point was recently highlighted when the roller door to the basement garage was faulty in 2018 and required manual operation to enter and exit the basement garage. Owing to the unique size of the roller door and the special components required for its operation, the roller door took several weeks to repair while replacement components were obtained. As such, residents of the Oliver Lane Apartment relied heavily on the use of this access way during that time.
- (c) Loss of the use of this Subject Laneway as a result of the proposed acquisition would render this access point redundant and require the owners corporation managing the Oliver Lane Apartment to explore other points of access onto Higson Lane. For the same reasons set out in paragraph 6.1(c), it is unjust and unreasonable to expect the Oliver Lane Apartment owners to incur the cost and inconvenience associated with this.

## **6.3 Ground 3: The Subject Laneway is required for the ongoing use and maintenance of existing infrastructure servicing the Oliver Lane Apartment**

- (a) The Oliver Lane Apartment is serviced by a number of infrastructure items that rely on the access to the Subject Laneway for their ongoing use and maintenance. This includes:
  - (i) a number of air conditioning units located on the northern wall of the Oliver Lane Apartment;
  - (ii) an existing penetration for kitchen exhaust systems leading from unit one on the Oliver Lane Apartment to the Subject Laneway; and

- (iii) lighting along the northern wall of the Oliver Lane Apartment building.
- (b) The ongoing maintenance and use of these infrastructure items rely on ongoing access provided by the Subject Laneway. Loss of access to the Subject Laneway will greatly inconvenience the ongoing maintenance required of these essential infrastructure items as permission will need to be sought for access each time from the Applicant in order to access this area.

**6.4 Ground 4: The Subject Laneway is poorly maintained and is already being used for waste disposal by the Applicant, despite the Subject Laneway's current legal status as a public asset**

- (a) As a public asset, the ongoing inspection and maintenance of the Subject Laneway is currently the responsibility of Council under the *Road Management Act* and its local laws.
- (b) Notwithstanding that Subject Laneway is currently a public road, it is consistently overflowing with rubbish from the Meatball & Wine Bar restaurant tenant at 133-135 Flinders Lane (**Restaurant**).
- (c) Shown in **attachment 1** are several pictures showing how the rubbish bins for the Restaurant are not properly stored within the title boundaries of 133 Flinders Lane (as demarcated by the silver gate shown in the photos).
- (d) The photos also show that there is litter all over the Subject Laneway, which obstructs public access. This is a consistent problem, which has been reported to the Restaurant directly, Council and the owner, Parasol, on numerous occasions.
- (e) Our client is very concerned about the future maintenance and cleanliness of the Subject Laneway in future if it was to be transferred to the Applicant due to the:
  - (i) existing practices of the Restaurant (Parasol's tenant),
  - (ii) failure of Parasol to compel the Restaurant prevent litter and maintain hygienic practices in the Subject Laneway – despite this (presumably) being the Restaurant's responsibility under the terms of its lease and liquor licence;
  - (iii) fire risk and risk to human health that this rubbish presents; and
  - (iv) risk that current waste problem will be exacerbated, as once the Subject Laneway is transferred as freehold land, Council would no longer be responsible for the ongoing maintenance and care of the Subject Laneway.

**6.5 Ground 5: The privatisation of the Subject Laneway is inconsistent with the urban and heritage character of the area, which is a tourism destination in and of itself**

- (a) Higson Lane is an example of the bluestone laneways which characterise the Melbourne CBD.
- (b) Higson Lane is the location of various historical warehouse buildings (many of which were connected to the clothing and textile industries) – including the Oliver Lane Apartment and 129 Flinders Lane, each of which are individually heritage listed.
- (c) In addition, in recent years Higson Lane has been transformed by street art.
- (d) Visitors to Melbourne view Higson Lane (and its surrounding laneways) as public art spaces - which are entirely unique to Melbourne.
- (e) It is entirely inconsistent with Council policy to privatise, or in any way restrict public access to these unique laneways, including the Subject Laneway.

7 For the reasons set out above, we submit that Council should resolve to refuse to allow the Discontinuation Proposal to proceed.

8 Please direct all future correspondence relating to this matter to our offices, marked to the attention of Andrea Towson.

Yours sincerely  
**Arnold Bloch Leibler**

**Andrea Towson**  
Senior Associate

---

**Subject:** FW: Council and Committee meeting submission form [#2028]

**Name: \*** Hendry Young

**Email address: \***

**Contact phone  
number (optional):**

**Please indicate  
which meeting  
you would like to  
make a  
submission to by  
selecting the  
appropriate  
button: \*** Submissions (Section 223) Committee

**Date of meeting: \*** Friday 3 May 2019

**Agenda item title:** PROPOSED DISCONTINUANCE AND SALE OF PART OF HIGSON LANE  
**\***

**Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. We encourage you to make your submission as early as possible.**

I am the owner of [redacted] which abuts the part of Higson Lane that is proposed for discontinuance and sale. 30 Oliver Lane has a basement that is over 400m2 in area and currently has 2 fire emergency exits as per building code requirements. One of these emergency exits opens onto the part of Higson Lane that is proposed for discontinuance and sale.

If the part of Higson Lane that is proposed for discontinuance and sale is closed the basement will only have one emergency exit. This will be in non-compliance with the Building Code of Australia and will result in OHS issues for the owners and users of the basement.

Yours Faithfully

Hendry Young

Mob:

Email:

Please indicate  No  
whether you  
would like to  
address the Future  
Melbourne  
Committee or the  
Submissions  
(Section 223)  
Committee in  
support of your  
submission:

*(No opportunity is  
provided for  
submitters to be  
heard at Council  
meetings.) \**

Privacy  I have read and acknowledge how Council will use and disclose my personal information.  
acknowledgement:

\*

Manager Governance and Legal  
Melbourne City Council  
GPO Box 1603  
Melbourne VIC 3001

On behalf of the Body Corporate Strata Plan No. \_\_\_\_\_ (30 Oliver Lane, Melbourne) we object to the discontinuance and sale of the part of Higson Lane advertised.

30 Oliver Lane has a basement that is over 400m<sup>2</sup> in area and currently has two emergency exits as per building code requirements. One of these emergency exits opens onto the part of Higson Lane that is proposed for discontinuance and sale. The existing arrangement has been approved via the planning and building permit application processes.

If the part of Higson Lane that is proposed for discontinuance and sale is closed the basement of 30 Oliver Lane will only have one emergency exit. This will be in non-compliance with the Building Code of Australia and will result in OHS issues for the owners and users of the basement.

It is impossible to construct another fire emergency exit from the basement without extensive works and the probable loss of basement area. The existing arrangement has been approved via the planning and building permit processes and any changes required to satisfy standards will incur significant costs to the Body Corporate and deliver no community benefit.

We therefore strongly object to the proposed discontinuance and sale of part of Higson Lane, Melbourne.

Yours Faithfully,

Hendry Young (Chairman, Body Corporate Strata Plan No. \_\_\_\_\_ ; 30 Oliver Lane, Melbourne)  
Mob:

25<sup>th</sup> April, 2019

Email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Manager Governance & Legal,  
Melbourne City Council

Dear Manager,

**Ref: DISC-2019- 2**  
**Submission by Delemase Enterprise Pty Ltd**

Delemase Enterprise Pty Ltd A.C.N. 004 370 898 is the registered Proprietor/Owner of 129 – 131 Flinders Lane, Melbourne 3000.

Our property faces north into Flinders Lane, east into Higson Lane, whilst our southern boundary is common to and extends along the full length of the subject laneway property.

Our southern boundary wall – of bluestone with three windows, forms a wall to the laneway property.

The laneway is presently owned by Council, and we are able to walk, step into and traverse the laneway for the purposes of inspecting the south wall of our property, and able to paint, and clean and attend to any required maintenance to our southern property wall.

So that our rights are not compromised and diminished, to maintain the status quo, if the laneway property is to be transferred to a private entity, we require an Easement of passageway to us, to be registered on title with any transfer of the laneway property lodged for registration at Land Victoria.

This will allow and ensure us access, freely at any time, now and in the future, as and when required. Not Council, nor us, nor any third party, is in a position at this point in time to determine exactly what our future requirements might be.

Page 2

Manager Governance & Legal

**Ref: DISC-2019-2**

Further, as the Easement of passageway to us – to run with the laneway property, any third party Owner, must be prohibited from fencing off / or erecting a key locked or padlocked gate at the Higson Lane entry.

Subject to and provided that there is a registered Easement for a right of passage to us, we have no objection to Council transfer of the laneway property to a third party

Yours Faithfully,  
**DELEMASE ENTERPRISE PTY LTD**  
**A.C.N. 004 370 898**  
per

23 April 2019

Manager Governance and Legal  
Melbourne City Council  
GPO Box 1603  
Melbourne Vic 3001

Email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Dear Sir/Madam,

Objection to Proposed Discontinuance and Sale of Part of Higson Lane, Melbourne.

I, Mark Connellan

Melbourne 3000, which adjoins the proposed land for sale (Higson Lane) hereby object to the sale of the Higson Lane land for the following reasons.

1. Value of Land:

As a neighbouring property owner I also have a genuine interest in purchasing the land in question and would be willing to pay a sum greater than the proposed amount. Should the Council wish to ignore the below items and the sale of land proceed then council's needs to demonstrate that it has achieved full market value – this cannot be demonstrated if my interest which is of a higher value (on the same terms) is/was ignored.

2. Fire Escape:

The Oliver Lane apartments require access via the doorway on the North East wall as a fire escape from the basement carpark.

- a. Our understanding is that the Oliver Lane Apartments require two fire exits to be compliant with the relevant building code. The proposed Higson Lane sale would close one of those exits rendering the building non-compliant to the relevant Building Code.

To remedy such non-compliance would require extensive works, probable loss of part of the basement area and expense for the Owners Corporation of 30 Oliver Lane to carry out such works.

This we believe to be unfair given that the existing layout (including the fire escape) has previously been approved by the Council via the planning and building permit processes.

- b. We submit that such a sale does not meet the Council's own guidelines re Road Discontinuance in that it is:
  - i. An action that results in an outcome contrary to the interests of the general public
  - ii. An action that does not meet the requirements of the emergency service providers and statutory service authorities.

3. Pedestrian access

The Oliver Lane apartments require access via the doorway on the North East wall for:

- a. Pedestrian access to the basement carpark and internal lift from Higson Lane which can only be obtained from that portion of Higson Lane that the Council proposes to sell.
- b. Access via the North East doorway to the roller door if manual operation of the roller door is required. There have been many instances whereby the roller door had to be manually operated due to damage caused by vehicles and mechanical malfunction. During the latter part of 2018 the roller door could only be manually controlled as a new roller door that was required had to be specifically manufactured incurring a delay of some 12 weeks whereby manual operation was the only option. Access for which the door on the North East is the only means of access from Higson Lane.

Loss of this access via the proposed sale of the Higson Lane land would render this access point redundant necessitating the Owners Corporation of Oliver Lane to explore and determine an alternate access point. The cost incurred we argue is unjust and unreasonable and for the same reasons as in paragraph 1(a) and 1(b) we believe the Council should not allow the sale of the land.

4. Heritage

The proposed sale of land in Higson Lane sits between the property at 30 Oliver Lane and the property at 129-131 Flinders lane (The Bluestone Building).

These buildings are listed as "Significant" on the Heritage Listing. In accordance with its own guidelines Council states "a road should not be discontinued without assessing the historical significance of the road".

The very nature of 129-131 Flinders Lane being of Bluestone construction is unique and deserving of protection. The area to be sold is integral to its character and with its Bluestone paving in this portion of the laneway itself is illustrative of the original Bluestone laneways of Melbourne.

We believe that the sale of the proposed land would not meet the council's own guidelines to access and take account of the historical significance of the road.

5. Good Neighbours

The existing operators of the Meatball & Wine Bar at 133-135 Flinders lane operate their business we assume under a lease from Parasol Pty Ltd, the owner and applicant for the discontinuance of the Higson Lane road.

We have found that despite reporting by the residents of 30 Oliver Lane and scrutiny by Council they have consistently failed to maintain the said area.

Issues include:

- a. Overflowing bins, rubbish on the ground including glass.
- b. Impeding access to the fire escape door through bin location.
- c. Flammable material left on the step of the fire escape door from 30 Oliver lane
- d. Bin pick up at all hours of the night causing loss of amenity and sleepless nights.
- e. Food scraps and smelly bins.
- f. If swept, rarely hosed down leaving a constant smear of food scraps and rubbish

We have little confidence that the restaurant and the owner are good neighbours.

If the proposed sale of land proceeds we believe the current rubbish issues will be even more telling, as the land under their freehold control would no longer be under the Council's direct care and scrutiny.

Council according to its guidelines needs to assess the effects of such Discontinuance on abutting properties and building and their owners and occupiers. In this instance re rubbish we believe we will be impacted negatively and as such the Council should not allow the sale of the proposed land.

For the reasons set out above, we submit that Council should resolve to refuse to allow the Discontinuance Proposal for the Sale of Land in Higson Lane to proceed.

It is our intention to attend in person to the meeting of the Committee on May 2, 2019, representing as we do the Body Corporate Committee of 30 Oliver Lane as a committee person.

MARK CONNELLAN

A handwritten signature in black ink, appearing to be 'MARK CONNELLAN', written over a faint, dashed horizontal line.

23 April 2019

Manager Governance and Legal  
Melbourne City Council  
GPO Box 1603  
Melbourne Vic 3001

Email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Dear Sir/Madam,

**Objection to Proposed Discontinuance and Sale of Part of Higson Lane, Melbourne.**

We, **Mark Anderson and Beth Crisp**, owners and residents of \_\_\_\_\_ which adjoins the proposed land for sale (Higson Lane).

We object to the sale of the Higson Lane land for the following reasons.

**1. Fire Escape:**

The Oliver Lane apartments require access via the doorway on the North East wall as a fire escape from the basement carpark.

- a. Our understanding is that the Oliver Lane Apartments require two fire exits to be compliant with the relevant building code. The proposed Higson Lane sale would close one of those exits rendering the building non-compliant to the relevant Building Code.

To remedy such noncompliance would require extensive works, probable loss of part of the basement area and expense for the Owners Corporation of 30 Oliver Lane to carry out such works.

This we believe to be unfair given that the existing layout (including the fire escape) has previously been approved by the Council via the planning and building permit processes.

- b. We submit that such a sale does not meet the Councils own guidelines re Road Discontinuance in that it is:
  - i. An action that results in an outcome contrary to the interests of the general public
  - ii. An action that does not meet the requirements of the emergency service providers and statutory service authorities.

**Pedestrian access**

The Oliver Lane apartments require access via the doorway on the North East wall for:

- c. Pedestrian access to the basement carpark and internal lift from Higson Lane which can only be obtained from that portion of Higson Lane that the Council proposes to sell.

- d. Access via the North East doorway to the roller door if manual operation of the roller door is required. There have been many instances whereby the roller door had to be manually operated due to damage caused by vehicles and mechanical malfunction. During the latter part of 2018 the roller door could only be manually controlled as a new roller door that was required had to be specifically manufactured incurring a delay of some 12 weeks whereby manual operation was the only option. Access for which the door on the North East is the only means of access from Higson Lane.

Loss of this access via the proposed sale of the Higson Lane land would render this access point redundant necessitating the Owners Corporation of Oliver Lane to explore and determine an alternate access point. The cost incurred we argue is unjust and unreasonable and for the same reasons as in paragraph 1(a) and 1(b) we believe the Council should not allow the sale of the land.

## **2. Heritage**

The proposed sale of land in Higson Lane sits between the property at 30 Oliver Lane and the property at 129-131 Flinders lane (The Bluestone Building).

These buildings are listed as "Significant" on the Heritage Listing. In accordance with its own guidelines Council states "a road should not be discontinued without assessing the historical significance of the road".

The very nature of 129-131 Flinders Lane being of Bluestone construction is unique and deserving of protection. The area to be sold is integral to its character and with its Bluestone paving in this portion of the laneway itself is illustrative of the original Bluestone laneways of Melbourne.

We believe that the sale of the proposed land would not meet the council's own guidelines to assess and take account of the historical significance of the road.

## **3. Good Neighbours**

The existing operators of the Meatball Wine Bar at 133-135 Flinders lane operate their business we assume under a lease from Parasol Pty Ltd, the owner and applicant for the discontinuance of the Higson Lane road.

We have found that despite reporting by the residents of 30 Oliver Lane and scrutiny by Council they have consistently failed to maintain the said area.

Issues include:

- a. Overflowing bins, rubbish on the ground including glass.
- b. Impeding access to the fire escape door through bin location.
- c. Flammable material left on the step of the fire escape door from 30 Oliver lane
- d. Bin pick up at all hours of the night causing loss of amenity and sleepless nights.
- e. Food scraps and smelly bins.
- f. If swept, rarely hosed down leaving a constant smear of food scraps and rubbish

We have little confidence that the restaurant and the owner are good neighbours.

If the proposed sale of land proceeds we believe the current rubbish issues will be even more telling, as the land under their freehold control would no longer be under the Council's direct care and scrutiny.

Council according to its guidelines needs to assess the effects of such Discontinuance on abutting properties and building and their owners and occupiers. In this instance re rubbish we believe we will be impacted negatively and as such the Council should not allow the sale of the proposed land.

For the reasons set out above, we submit that Council should resolve to refuse to allow the Discontinuance Proposal for the Sale of Land in Higson Lane to proceed.

Yours Sincerely



24 April 2019

Manager Governance and Legal

Melbourne City Council

GPO Box 1603

Melbourne Vic 3001

Email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Dear Sir/Madam,

**Objection to Proposed Discontinuance and Sale of Part of Higson Lane, Melbourne.**

I, **Helen Hinckfuss**, owner and resident of \_\_\_\_\_ which adjoins the proposed land for sale (Higson Lane).

I object to the sale of the Higson Lane land for the following reasons.

**1. Fire Escape:**

The Oliver Lane apartments require access via the doorway on the North East wall as a fire escape from the basement car park.

- a. Our understanding is that the Oliver Lane Apartments require two fire exits to be compliant with the relevant building code. The proposed Higson Lane sale would close one of those exits rendering the building non-compliant to the relevant Building Code.

To remedy such noncompliance would require extensive works, probable loss of part of the basement area and expense for the Owners Corporation of 30 Oliver Lane to carry out such works.

This we believe to be unfair given that the existing layout (including the fire escape) has previously been approved by the Council via the planning and building permit processes.

- b. We submit that such a sale does not meet the Councils own guidelines re Road Discontinuance in that it is:
  - i. An action that results in an outcome contrary to the interests of the general public
  - ii. An action that does not meet the requirements of the emergency service providers and statutory service authorities.

## 2. Pedestrian access

The Oliver Lane apartments require access via the doorway on the North East wall for:

- a. Pedestrian access to the basement car park and internal lift from Higson Lane which can only be obtained from that portion of Higson Lane that the Council proposes to sell.
- b. Access via the North East doorway to the roller door if manual operation of the roller door is required. There have been many instances whereby the roller door had to be manually operated due to damage caused by vehicles and mechanical malfunction. During the latter part of 2018 the roller door could only be manually controlled as a new roller door that was required had to be specifically manufactured incurring a delay of some 12 weeks whereby manual operation was the only option. Access for which the door on the North East is the only means of access from Higson Lane.

Loss of this access via the proposed sale of the Higson Lane land would render this access point redundant necessitating the Owners Corporation of Oliver Lane to explore and determine an alternate access point. The cost incurred we argue is unjust and unreasonable and for the same reasons as in paragraph 1(a) and 1(b) we believe the Council should not allow the sale of the land.

## 3. Heritage

The proposed sale of land in Higson Lane sits between the property at 30 Oliver Lane and the property at 129-131 Flinders lane (The Bluestone Building).

These buildings are listed as "Significant" on the Heritage Listing. In accordance with its own guidelines Council states "a road should not be discontinued without assessing the historical significance of the road".

The very nature of 129-131 Flinders Lane being of Bluestone construction is unique and deserving of protection. The area to be sold is integral to its character and with its Bluestone paving in this portion of the laneway itself is illustrative of the original Bluestone laneways of Melbourne.

We believe that the sale of the proposed land would not meet the council's own guidelines to assess and take account of the historical significance of the road.

## 4. Good Neighbours

The existing operators of the Meatball & Wine Bar at 133-135 Flinders lane operate their business we assume under a lease from Parasol Pty Ltd, the owner and applicant for the discontinuance of the Higson Lane road.

We have found that despite reporting by the residents of 30 Oliver Lane and scrutiny by Council they have consistently failed to maintain the said area.

Issues include:

- a. Overflowing bins and rubbish on the ground including glass.
- b. Impeding access to the fire escape door through bin location.
- c. Flammable material left on the step of the fire escape door from 30 Oliver lane
- d. Bin pick up at all hours of the night causing loss of amenity and sleepless nights.
- e. Food scraps and smelly bins.

f. If swept, rarely hosed down leaving a constant smear of food scraps and rubbish

We have little confidence that the restaurant and the owner are good neighbours.

If the proposed sale of land proceeds we believe the current rubbish issues will be even more telling, as the land under their freehold control would no longer be under the Council's direct care and scrutiny.

Council according to its guidelines needs to assess the effects of such Discontinuance on abutting properties and building and their owners and occupiers. In this instance regarding rubbish we believe we will be impacted negatively and as such the Council should not allow the sale of the proposed land.

For the reasons set out above, we submit that Council should resolve to refuse to allow the Discontinuance Proposal for the Sale of Land in Higson Lane to proceed.

Yours Sincerely,

23 April 2019

Manager Governance and Legal

Melbourne City Council

GPO Box 1603

Melbourne Vic 3001

Email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Dear Sir/Madam,

**Objection to Proposed Discontinuance and Sale of Part of Higson Lane, Melbourne.**

I, my wife (who is the owner) are residents of 30 Oliver Lane, Melbourne which adjoins the proposed land for sale (Higson Lane).

We object to the sale of the Higson Lane land for the following reasons.

**1. Fire Escape:**

The Oliver Lane apartments require access via the doorway on the North East wall as a fire escape from the basement carpark.

- a. Our understanding is that the Oliver Lane Apartments require two fire exits to be compliant with the relevant building code. The proposed Higson Lane sale would close one of those exits rendering the building non-compliant to the relevant Building Code.

To remedy such noncompliance would require extensive works, probable loss of part of the basement area and expense for the Owners Corporation of 30 Oliver Lane to carry out such works.

This we believe to be unfair given that the existing layout (including the fire escape) has previously been approved by the Council via the planning and building permit processes.

- b. We submit that such a sale does not meet the Council's own guidelines re Road Discontinuance in that it is:
  - i. An action that results in an outcome contrary to the interests of the general public
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- a. Pedestrian access to the basement carpark and internal lift from Higson Lane which can only be obtained from that portion of Higson Lane that the Council proposes to sell.
- b. Access via the North East doorway to the roller door if manual operation of the roller door is required. There have been many instances whereby the roller door had to be manually operated due to damage caused by vehicles and mechanical malfunction. During the latter part of 2018 the roller door could only be manually controlled as a new roller door that was required had to be specifically manufactured incurring a delay of some 12 weeks whereby manual operation was the only option. Access for which the door on the North East is the only means of access from Higson Lane.

Loss of this access via the proposed sale of the Higson Lane land would render this access point redundant necessitating the Owners Corporation of Oliver Lane to explore and determine an alternate access point. The cost incurred we argue is unjust and unreasonable and for the same reasons as in paragraph 1(a) and 1(b) we believe the Council should not allow the sale of the land.

## 3. Heritage

The proposed sale of land in Higson Lane sits between the property at 30 Oliver Lane and the property at 129-131 Flinders lane (The Bluestone Building).

These buildings are listed as "Significant" on the Heritage Listing. In accordance with its own guidelines Council states "a road should not be discontinued without assessing the historical significance of the road".

The very nature of 129-131 Flinders Lane being of Bluestone construction is unique and deserving of protection. The area to be sold is integral to its character and with its Bluestone paving in this portion of the laneway itself is illustrative of the original Bluestone laneways of Melbourne.

We believe that the sale of the proposed land would not meet the council's own guidelines to assess and take account of the historical significance of the road.

## 4. Good Neighbours

The existing operators of the Meatball & Wine Bar at 133-135 Flinders lane operate their business we assume under a lease from Parasol Pty Ltd, the owner and applicant for the discontinuance of the Higson Lane road.

We have found that despite reporting by the residents of 30 Oliver Lane and scrutiny by Council they have consistently failed to maintain the said area.

Issues include:

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We have little confidence that the restaurant and the owner are good neighbours.

If the proposed sale of land proceeds we believe the current rubbish issues will be even more telling, as the land under their freehold control would no longer be under the Council's direct care and scrutiny.

Council according to its guidelines needs to assess the effects of such Discontinuance on abutting properties and building and their owners and occupiers. In this instance re rubbish we believe we will be impacted negatively and as such the Council should not allow the sale of the proposed land.

For the reasons set out above, we submit that Council should resolve to refuse to allow the Discontinuance Proposal for the Sale of Land in Higson Lane to proceed.

It is our intention to attend in person to the meeting of the Committee on May 2, 2019, representing as we do the Body Corporate Committee of 30 Oliver Lane as a committee person.

Yours Sincerely

Dennis McCluskey

Robyn McCluskey

23 April 2019

Manager Governance and Legal  
Melbourne City Council  
GPO Box 1603  
Melbourne Vic 3001

Email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

Dear Sir/Madam,

**Objection to Proposed Discontinuance and Sale of Part of Higson Lane, Melbourne.**

I, Jennifer Jabu, owner and resident of a proposed land for sale (Higson Lane), which adjoins the

We object to the sale of the Higson Lane land for the following reasons.

**1. Fire Escape:**

The Oliver Lane apartments require access via the doorway on the North East wall as a fire escape from the basement carpark.

- a. Our understanding is that the Oliver Lane Apartments require two fire exits to be compliant with the relevant building code. The proposed Higson Lane sale would close one of those exits rendering the building non-compliant to the relevant Building Code.

To remedy such noncompliance would require extensive works, probable loss of part of the basement area and expense for the Owners Corporation of 30 Oliver Lane to carry out such works.

This we believe to be unfair given that the existing layout (including the fire escape) has previously been approved by the Council via the planning and building permit processes.

- b. We submit that such a sale does not meet the Council's own guidelines re Road Discontinuance in that it is:
  - i. An action that results in an outcome contrary to the interests of the general public
  - ii. An action that does not meet the requirements of the emergency service providers and statutory service authorities.

## 2. Pedestrian access

The Oliver Lane apartments require access via the doorway on the North East wall for:

- a. Pedestrian access to the basement carpark and internal lift from Higson Lane which can only be obtained from that portion of Higson Lane that the Council proposes to sell.
- b. Access via the North East doorway to the roller door if manual operation of the roller door is required. There have been many instances whereby the roller door had to be manually operated due to damage caused by vehicles and mechanical malfunction. During the latter part of 2018 the roller door could only be manually controlled as a new roller door that was required had to be specifically manufactured incurring a delay of some 12 weeks whereby manual operation was the only option. Access for which the door on the North East is the only means of access from Higson Lane.

Loss of this access via the proposed sale of the Higson Lane land would render this access point redundant necessitating the Owners Corporation of Oliver Lane to explore and determine an alternate access point. The cost incurred we argue is unjust and unreasonable and for the same reasons as in paragraph 1(a) and 1(b) we believe the Council should not allow the sale of the land.

## 3. Heritage

The proposed sale of land in Higson Lane sits between the property at 30 Oliver Lane and the property at 129-131 Flinders lane (The Bluestone Building).

These buildings are listed as "Significant" on the Heritage Listing. In accordance with its own guidelines Council states "a road should not be discontinued without assessing the historical significance of the road".

The very nature of 129-131 Flinders Lane being of Bluestone construction is unique and deserving of protection. The area to be sold is integral to its character and with its Bluestone paving in this portion of the laneway itself is illustrative of the original Bluestone laneways of Melbourne.

We believe that the sale of the proposed land would not meet the council's own guidelines to assess and take account of the historical significance of the road.

## 4. Good Neighbours

The existing operators of the Meatball & Wine Bar at 133-135 Flinders lane operate their business we assume under a lease from Parasol Pty Ltd, the owner and applicant for the discontinuance of the Higson Lane road.

We have found that despite reporting by the residents of 30 Oliver Lane and scrutiny by Council they have consistently failed to maintain the said area.

Issues include:

- a. Overflowing bins, rubbish on the ground including glass.
- b. Impeding access to the fire escape door through bin location.
- c. Flammable material left on the step of the fire escape door from 30 Oliver lane
- d. Bin pick up at all hours of the night causing loss of amenity and sleepless nights.
- e. Food scraps and smelly bins.
- f. If swept, rarely hosed down leaving a constant smear of food scraps and rubbish

We have little confidence that the restaurant and the owner are good neighbours.

If the proposed sale of land proceeds we believe the current rubbish issues will be even more telling, as the land under their freehold control would no longer be under the Council's direct care and scrutiny.

Council according to its guidelines needs to assess the effects of such Discontinuance on abutting properties and building and their owners and occupiers. In this instance re rubbish we believe we will be impacted negatively and as such the Council should not allow the sale of the proposed land.

For the reasons set out above, we submit that Council should resolve to refuse to allow the Discontinuance Proposal for the Sale of Land in Higson Lane to proceed.

It is our intention to attend in person to the meeting of the Committee on May 2, 2019, representing as we do the Body Corporate Committee of 30 Oliver Lane as a committee person.

Yours Sincerely

Jennifer Jabu 

## Proposed discontinuance and sale of part of Higson Lane

I, with my wife, are \_\_\_\_\_ which adjoins the part of Higson lane under discussion. Sale of this piece of land would or could have serious consequences for our safety and convenience. We object to the sale of this part of Higson Lane on several grounds. Three of these are listed below.

Approximately 6.5 metres into the land from the edge of Higson Lane proper, there is a door to the basement of 30 Oliver Lane. This door is the only pedestrian access from the basement of 30 Oliver Lane to Higson lane. It is also the only door which gives pedestrian access to the basement from Higson Lane

1. This door is a designated fire escape on the plan of subdivision of 30 Oliver Lane. As such it can be opened at any time by anyone in the basement without a key in the case of fire or other emergency, and is the **only** escape for a person caught in the north east of the basement in the event of fire. [As it is a fire escape door it has no lock on the inside and can be opened at any time from the inside of the basement]

Sale of the said lane would necessarily prevent persons in the basement using this fire escape.

2. This door is the only pedestrian access from Higson Lane which gives all owners and residents of 30 Oliver Lane access to the building basement and lift from Higson Lane. There is another pedestrian door to 30 Oliver Lane from Higson Lane but this door only gives access to the four units on the north side of the building, and then only to the unit of the respective owner. The other eight unit owners/residents on the south side of the building cannot access any part of the building from this other door. Pedestrian access to the basement and lift from Higson Lane for all residents can only be achieved from the door in the portion of Higson Lane which the council proposes to sell.

3. In the event of damage or failure of the motor on the vehicular roller door to the basement garage necessitating manual operation of the roller door it is necessary to enter the basement by the door in the land proposed to be sold, to operate the roller door manually.

Unfortunately, due to the unique size of the vehicular access, the roller door is not a stock item and replacement or repair of damage has necessitated lengthy periods of manual operation from inside the basement. As recently as late in 2018, the roller door had to be operated manually for several weeks while a new roller door was manufactured to allow the electric motor to function. Over the years we have had the roller door require manual operation from inside the basement on many occasions thus necessitating access via the door in the land the council proposes to sell.

Although we would have liked to appear before the committee in support of our submission, we will be absent from Australia when the committee is holding its meeting on the 2 May 2019. I understand that other body corporate committee members will attend.

Graeme Frith  
Body Corporate committee member, 30 Oliver Lane

Attachment: Sketch showing approximate position of fire escape door

