

**Presenter:** Angela Meinke, Manager Planning and Building

### **Purpose and background**

1. The purpose of this report is to seek endorsement of a proposed course of action in relation to a proposal that has been received from Planning and Property Partners Pty Ltd on behalf of Block Arcade Melbourne Pty Ltd (BAM), the owner of Block Arcade.
2. The proposal requests the discontinuance and transfer to BAM of the southern section of Block Place and the transfer to BAM of management control of the northern section of Block Place. The proposal is described in detail in the Supporting Attachment.
3. Block Place is a road on Council's Road register which is managed by Council. Block Place is owned on title by BAM. Block Arcade has raised questions as to the effectiveness of the deed of dedication for Block Place made in 1987 which BAM claims brings in to question the status of Block Place as a public highway.

### **Key issues**

4. The discontinuance of a road removes all private and public encumbrances from the subject land, save for certain public authority rights. This can have significant impacts on the access, servicing, building regulation compliance and development potential of other lands and buildings. Accordingly, Council's policy for the discontinuance and sale of roads sets out considerations and requirements to be met when assessing any proposal to discontinue and sell a road.
5. Council policy only favours the discontinuance and sale of roads when this leads to a public benefit and where, amongst other matters, the effects on abutting and relevant properties and buildings and on the rights of owners and occupiers of those properties, together with the rights of the public (where applicable) are considered.
6. Management is of the view that, subject to consultation with the owners of properties at 88-94 Elizabeth St, there may be public benefit in the discontinuance of the southern section of Block Place, together with the adjoining Council Lane 1177 with rights of egress preserved for the Elizabeth St properties. Discontinuance with easements could allow this part of Block Place to be better integrated with the arcades whilst preserving egress needs of the adjoining properties.
7. Management is also of the view that the proposal to transfer management authority over the northern section of Block Place would be contrary to Council's long-established strategy to enliven city lanes as public spaces and would clearly change the circumstances under which current traders operate. No evidence of support from other stakeholders has been provided.
8. The consultation requirements of the *Local Government Act 1989* must be met for any proposal for the discontinuance and sale of a road. This is a formal process that includes the advertising of a proposal in the newspaper and written notice being forwarded to the owners and occupiers of all properties abutting the subject portion of the road, and to any other persons likely to be affected by the proposal. A notice of a proposal is also placed at the entrance to the road.
9. Whilst there may be merit in the proposed discontinuance and sale of the southern section of Block Place, and there is a formal process to consider any such request which includes full public notification and consultation, it is considered prudent to first ensure that there is consultation with adjoining owners and occupiers prior to commencing a formal process.

### **Recommendation from management**

10. That the Future Melbourne Committee resolves to not agree to change the management arrangements for the northern section of Block Place.

- 10.1. Request the proponent to undertake preliminary consultation with the owners and occupiers of abutting and relevant properties and buildings, and provide a summary of who was consulted and the response, as part of a formal request to discontinue the southern section Block Place and CL1177.
- 10.2. Request management to present a further report to the Future Melbourne Committee on completion of resolution 10.2 above.

**Attachments:**

1. Supporting Attachment
2. Plan for Proposal
3. Ownership Plan

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**Legal**

1. Pursuant to sections 206(1) and clause 3 of Schedule 10 of the *Local Government Act 1989*, Council has the power to discontinue and sell roads.

**Further Background**

2. BAM, the owner of Block Arcade proposes to Council that it:
  - 2.1. Discontinue the southern section (red hatched on the plan in attachment 2) of Block Place, sell the land back to BAM for nominal consideration subject to a granting back of an easement in favour of both Council and the properties at 88-94 Elizabeth Street abutting Council Lane CL1177 to ensure continuing access rights. The easement would be subject to any fire and maintenance requirements.
  - 2.2. Exempt the handful of traders operating on the northern section of Block Place from the requirement to hold a permit under the *Activities Local Law 2009* where the trader operates with the consent of BAM. This would allow BAM to manage the trading activities in Block Place. There are currently 6 street trading permits issued in Block Place.
  - 2.3. Enter into a section 173 agreement in relation to the northern section of Block Place, permitting BAM to raise prescribed 'management fees', the parameters of which are yet to be agreed, to ensure proper cleaning, insurance and maintenance along the full length of Block Place.
  - 2.4. Take over management responsibilities for the entire length of Block Place, subject to resolution as to cost and likely Council reimbursement in the event that a management fee regime be such that there remains a shortfall.

**Finance**

3. In accordance with policy, BAM must meet all costs associated with the proposal.
4. Ongoing maintenance costs would be saved and no longer expended by Council, estimates are
  - 4.1. Surveillance, Routine Maintenance & Service request response - \$1,200 (approx.)
  - 4.2. Minor Maintenance works - \$280
  - 4.3. Tenancy Signage works - \$5,600
5. Block Place is constructed as a bluestone paved area (on a concrete slab) and used primarily by pedestrians and café operations. Therefore on-going maintenance is less than other Council Lanes but renewal cost of the paved area would be in the order of \$180,000. There is a 225mm diameter Storm water drain running through Block Place as well.

**Conflict of interest**

6. 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.

**Stakeholder consultation**

7. The proposal if approved will require public notice in the follow methods:
  - 7.1. advertising in the Age
  - 7.2. a letter sent to the owners and occupiers of abutting properties
  - 7.3. all of the Service Authorities notified by e-mail of the proposal.

**Relation to Council policy**

8. The proposed discontinuance does not accord with the Road Discontinuance and Sale Policy based on the proposed sale for a nominal consideration.

**Environmental sustainability**

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

Plan for proposal



Ownership plan

