

Management report to Council

Agenda item 6.7

Proposed discontinuance of part of PL5266, Melbourne

Council

Presenter: Angela Meinke, Manager Planning and Building

28 February 2017

Purpose and background

1. The purpose of this report is to recommend that the road shown hatched on the plan in Attachment 2 be discontinued as detailed in the recommendation. The road adjoins the Munro re-development site.
2. The road (affected land) is known as PL5266 a private lane on Council's Road Register and is an easement of way. The last known owner is Charles Palmer from 1859.
3. The discontinuance is being undertaken in conjunction with the declaration of CL1184, Blender Lane (PL5133) and part of PL5266 shown shaded on the plan in Attachment 2. A separate report is being presented to address submissions received to the declaration.

Key issues

4. Public consultation in respect to the proposed discontinuance was undertaken (see Attachment 1). Two submissions (see Attachment 3) were lodged as follows:
 - 4.1. David Tweed the owner of the property at 432 Queen Street, Melbourne, who is objecting to Council removing part of Melbourne's famed laneways when it is Council Policy to increase laneways and construction on the laneway potentially reducing the value of adjoining properties.
 - 4.2. Peter Papageorgiou representing Tramere Pty Ltd and others, the owners of the abutting property at 446-450 Queen Street, Melbourne, who are objecting to the removal of easement rights.
5. The affected land is currently enclosed by a gate, which restricts the use of the easement rights by the benefitting properties along Queen Street. The submission from Tramere Pty Ltd includes a request for the gate over the private lane/easement to be removed.
6. The recommendation proposes to discontinue all the affected land and vest the southern 3.5 metres of the affected land as a road in Council to maintain the access and easement rights for the properties along Queen Street and consolidate the balance with the abutting Council owned land for the proposed new Community Hub.
7. The recommendation reflects the recommendation from Council's Submissions (Section 223) Committee held on 8 December 2016.

Recommendation from management

8. That Council:
 - 8.1. Discontinues that part of PL5266, Melbourne as shown on the public notice dated 27 October 2016, subject to the dedication of the southern 3.5 meters of the affected land as a road on a plan of subdivision and consolidation of the balance of the affected land with the abutting land, for the reasons that:
 - 8.1.1. it removes uncertainty about the ownership and obligations in respect to maintenance of the affected land
 - 8.1.2. the dedication of the southern 3.5 meters substantially addresses the concerns of the objector whilst still providing improved access to the rear of 450 Queen Street with the removal of the gate.
 - 8.2. Notifies in writing every person who has lodged a separate submission of the decision and reasons for the decision.

Attachments:

1. Supporting Attachment (page 2 of 34)
2. Public Notice (page 3 of 34)
3. Plan (page 4 of 34)
4. Submissions (page 5 of 34)

Supporting Attachment

Legal

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

Finance

2. The affected land is a private road and is not managed or maintained by the Council. If the application is approved and the road is discontinued, the Act vests the subject land in the Council.
3. The land surveying, plan of subdivision preparation and lodging costs at Land Victoria which will be undertaken in conjunction with the declaration of the adjoining lanes to minimise costs.
4. Council responsibility for maintaining and cleaning of the Roads will be met from existing general and future budgets. Council may receive monies from parking infringements within the Roads.

Conflict of interest

5. 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

6. Public consultation in respect to the proposed declaration was undertaken in accordance with the Act. Overall the consultation involved:
 - 6.1. advertising in The Age on 27 October 2016
 - 6.2. a letter was sent to the owners and occupiers of abutting properties
 - 6.3. all of the service authorities being notified by e-mail of the proposal.
7. Submissions were received and reported at the Submissions (Section 223) Committee meeting held on 8 December 2016.

Relation to Council policy

8. The proposed discontinuance has been assessed under the Road Discontinuance and Sale Policy based on the following points:
 - 8.1. Private roads are not a Council asset nor owned by Council. Sometimes the adjoining owners are actually controlling the road and in other cases they are back alleys that no one takes responsibility for.
 - 8.2. The Council denies all responsibility for the care and maintenance of private roads and expressly excludes them from the maintenance standards in its road management plan.
 - 8.3. Despite these private roads not being under Council ownership or management, the Act allows a local government to propose to discontinue a 'road' irrespective of whether the road is a Council owned/maintained road or a private road. When the notice of the discontinuance is published in the government gazette, the road vests in the Council's name. If the road is under the general law system, the discontinuance brings the land under the *Transfer of Land Act* so a certificate of title for the land can be created by Land Victoria.
 - 8.4. Engineering and Land Survey have records of every road and which are maintained by and under the Council's management and are a Council asset and those for which it denies responsibility.

Environmental sustainability

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

Public Notice published in the Age on 27 October 2016

Melbourne City Council

Proposed discontinuance of part of PL5266, Melbourne

Notice is given pursuant to sections 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 PL5266 as shown hatched on the plan below ('Proposal').

The Proposal is to enable the discontinued area, to be consolidated with the adjoining Council owned land for the proposed new Community Hub.

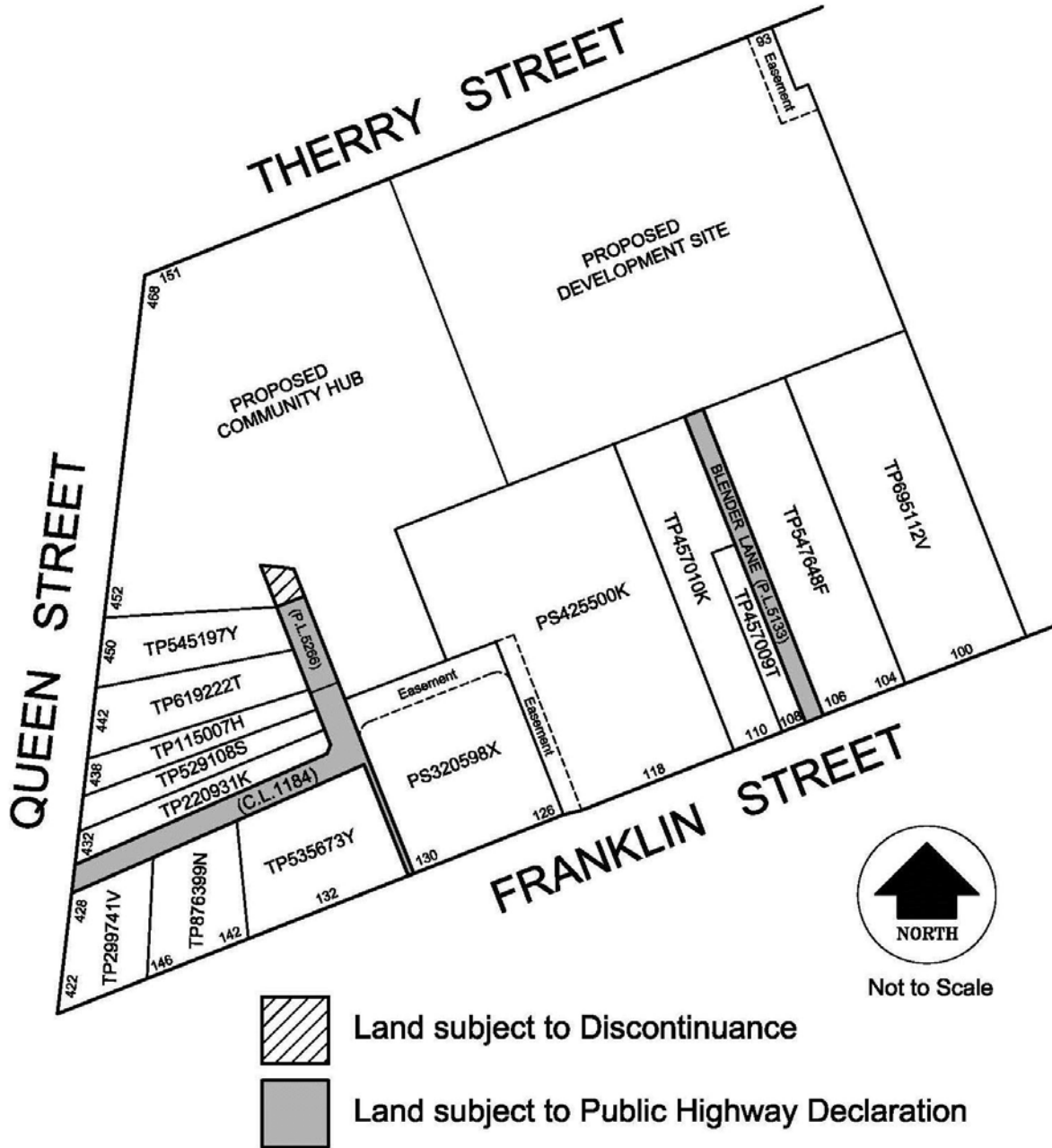
Any person may make a submission on the Proposal to the Council. All submissions received by the Council on or before 25 November 2016 will be considered in accordance with Section 223(1) of the Act, by the Council's Submissions (Section 223) Committee ('Committee').

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 Thursday 8 December 2016, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

Written submissions should be marked 'Proposed Discontinuance of part of PL5266, Melbourne' and addressed to the Manager Governance and Legal, Melbourne City Council, Town Hall, 90 Swanston Street, Melbourne, 3000 or GPO Box 1603, Melbourne, 3001.

Submissions form part of the public record of the meeting (including any personal information you provide) and will be appended to the Council report which is 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, in accordance with the requirements of the Act.

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



From: David Tweed
Sent: Wednesday, 2 November 2016 2:24 AM
To: Survey
Subject: Proposed Discontinuance of part of PL5266

Council is acquiring open space and will probably use it to improve the purchase of the Munro site to the detriment of the public.

The council is removing part of Melbourne's famed laneways when it is council policy to increase the laneway system.

By building on the acquired laneway, the council would subtly reduce the value of the adjoining properties. The build increases the mass near the property thus decreasing other properties amenity. This is especially true for property TP545197Y (450 Queen str) which was purchased with the laneway protruding past their site. The council will not be adding any amenity to neighboring properties while detracting from them.

The council should leave the laneway alone.

Yours faithfully
David Tweed Director



446-450 Queen Street, Melbourne ,3000

Submission to City of Melbourne

Section 223 Local Government Act.

Submission Due before 25 November 2016

Manger Governance and Legal Services.

Melbourne City Council,

Town Hall,

90 Swanston Street

Melbourne 3000.

Owner

TRAMERE PTY LTD

Property

446-450 QUEEN STREET, MELBOURNE,3000

Title ref 8981/812

Land Lot 1 Title Plan 545197 Y

Submission Prepared by

Peter Papageorgiou

Director

Tramere Pty Ltd



446-450 Queen Street, Melbourne ,3000

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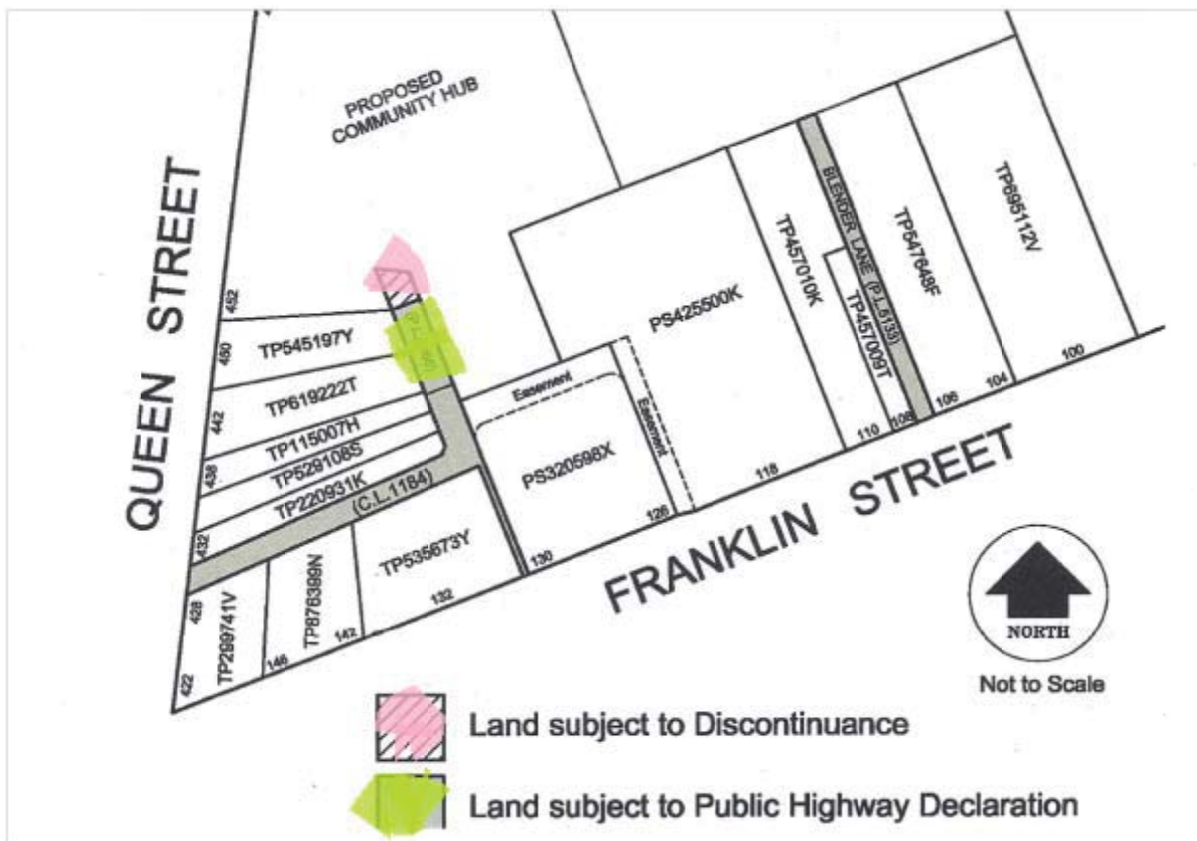
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1.0 THE PROPOSAL

Proposed discontinuance of part of PL 5266, Melbourne.

Notice is given pursuant to sections 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 PL5266 as shown hatched on the plan below ('Proposal').

The Proposal is to enable the discontinued area, to be consolidated with the adjoining Council owned land for the proposed new Community Hub.





446-450 Queen Street, Melbourne ,3000

Proposed Public highway Declaration,CL1184,Blender Lane (PL5133) and part of PL5266,Melbourne.

Notice is given pursuant to sections 204(1) and 223 of the *Local Government Act 1989* ('Act') that the Melbourne City Council ('Council') proposes to declare CL1184, Blender Lane (PL5133) and part of PL5266, Melbourne, shaded on the plan above as public highways ('Proposal').

CL1184 is considered to be a public highway at common law having been maintained by the Council for many decades and is on the Council's Road Register under the *Road Management Act 2004*. The Proposal is to put this public highway status beyond doubt.

Blender Lane (PL5133) and part of PL5266 are proposed to be declared public highway's to enable them to be added to Council's Road Register and maintained by Council.



446-450 Queen Street, Melbourne ,3000

2.0 Response to Council Proposals

Proposed Public highway Declaration,CL1184,Blender Lane (PL5133) and part of PL5266,Melbourne.

Laneway	Proposal	Our Response
CL 1184	Declare as a Public Highway	Objection
Blender lane(PL5133)	Declare as a Public Highway	No Objection
Part of PL5266	Declare as a Public Highway	OBJECTION

Proposed discontinuance of part of PL 5266,Melbourne

Laneway	Proposal	Our Response
Part of PL 5266 Land subject to Discontinuance	Discontinue as a Road	OBJECTION



446-450 Queen Street, Melbourne ,3000

3.0 Background

3.1 Zone and overlays

Capital City Zone 1

Design and Development Overlay Schedules 1 and 14

Heritage Overlay Schedule 7

3.2 Photo rear 446-450 Queen street



3.3 Map rear 446-450 Queen street





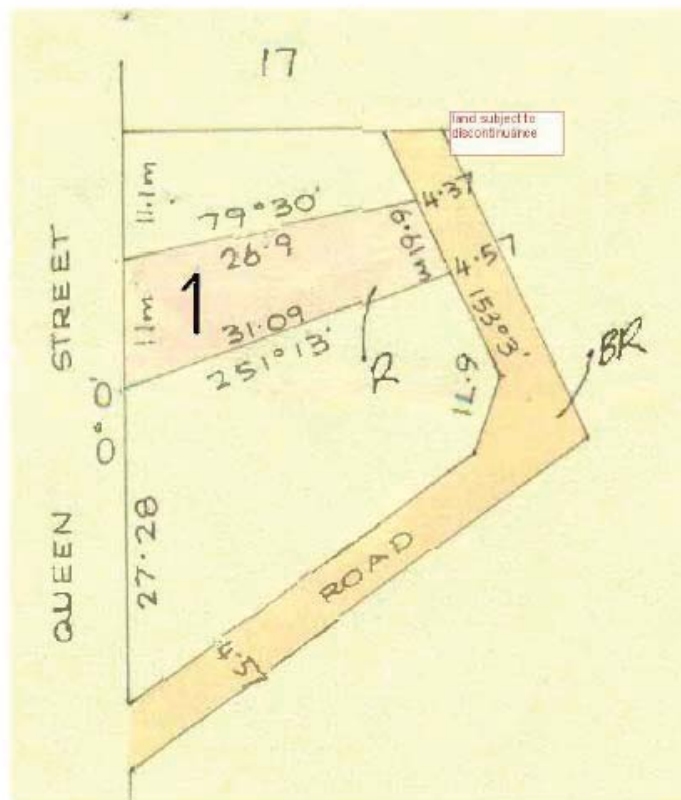
446-450 Queen Street, Melbourne ,3000

3.4 Our Title/ Carriageway Easement

Title Ref 8981/ 812

Land Lot 1 Title Plan 545197Y

Plan



Carriageway Easement

Description of Land / Easement Information

ALL THAT piece of land delineated and coloured red - on the map hereon being part of Crown Allotment One Section 42 City of - Melbourne Parish of Melbourne North County of Bourke **Together with a -- right of carriageway over the road coloured brown** on the said map - - - -



446-450 Queen Street, Melbourne ,3000

4.0

24 November 2016

Proposed Discontinuance of Part of PL5266.

Manger Governance and Legal Services.

Melbourne City Council,

Town Hall,

90 Swanston Street

Melbourne 3000.

Dear Sir/ Madam,

Submission in relation the Notice received from the City of Melbourne, dated 25 October 2016.

Proposed Discontinuance of Part of PL5266.

1. We refer to the notice received on the 25 October 2016.

2. We are the owners of TP545197Y, 446-450 Queen St, Melbourne, 3000 ("The Title Holders"). Tramere Pty Ltd.

3. The Land 446-450 Queen Street Melbourne ("Our Land") has the benefit of an easement, constituted by a right of carriageway, which runs from the end of CL1184 (A Bluestone ROW extends in an L-shape between Queen Street and beyond the rear of the subject site).("the Easement")

(a) The land formally known as Crown Allotment 1 Section 42, was purchased from the Crown by Charles Palmer on 20th July 1859. This Purchase was registered under the Real Property Act in the Register Book

(b) Charles Palmer sub-divided Allotment 1 and 2 into 19 lots. **see attached appendix 1.1-1.3**

(c) The easement constituted by right of way is described in the Memorandum of Transfer on the sale of title .

Lots 16 & 17(Our Land) were sold by Charles Palmer to James Lynch on 29th September 1864-Charles Palmer was the Original Crown Grantee and as per the Deed in Registry Book 143 Vol 390



446-450 Queen Street, Melbourne ,3000

Palmer expressly granted a right of carriageway over the 15 foot road to "Our Land." This Right Of Carriageway was **granted and Registered** on the 29th September 1864 and has run with the land ever since. **(See appendix 3.1-3.2 and Original Legal Examiners Notes Attached appendix 2.1-2.2)**

This "easement" was created by registration of a transfer of the dominant land. Section 45(2) of the Transfer of Land Act provides that, on registration of a transfer, the transferee becomes the registered proprietor of the estate or interest set out in the transfer, 'with all rights powers and privileges thereto appertaining'. This indicates that the title vested by section 45 includes the benefit of any easement attached to the land. Section 42(1) confers upon the registered proprietor of 'land' indefeasible title to the land described in the relevant folio of the register. 'Land' is defined in section 4(1) to include 'any interest or estate in land' and is therefore broad enough to include an easement.

(d) The title holders have enjoyed continued privileges and rights of this easement to pass and repass and to load and unload deliveries from the rear of our land.

The history of the easement makes it clear that the purported exercise of power by the Council is misconceived.

As seen below *Transfer of Land Act provides.....*

Registered easements

3.1. *Easements can be created by registration of a transfer of the dominant land. Section 45(2) of the Transfer of Land Act provides that, on registration of a transfer, the transferee becomes the registered proprietor of the estate or interest set out in the transfer, 'with all rights powers and privileges thereto appertaining'. This indicates that the registered proprietor's title includes the benefit of any easement attached to the land.*

3.2 *Section 42(1) of the Transfer of Land Act confers upon the registered proprietor title to the land described in the relevant folio of the register. 'Land' is defined in section 4(1) to include 'any interest or estate in land' and is therefore broad enough to include an easement.*

3.3 *Registered easements can also be created by 'a transfer of that interest under section 45 of the Transfer of Land Act'.*

3.4 *Registered interests are statutory interests conferred by operation of the Transfer of Land Act on registration of the transfer. A registered interest cannot be annulled or set aside unless it was obtained through fraud. Even a forged instrument of transfer confers a valid title upon an innocent purchaser who registers it.*

3.5 *An easement can also be recorded on the folio of the servient or dominant land. Under section 72 of the Transfer of Land Act, the Registrar may record an easement on the folio of the dominant and servient land if satisfied of its existence by a transfer, instrument, deed or written document, court order or award of an arbitrator or a legal practitioner's certificate. In Riley v Penttila, Justice Gillard held that the recording of an easement on the folio to the dominant land under section 72 is conclusive evidence of the dominant owner's right to the easement.*

4. The "Council" Notice concerns the easement. The "Council" Notice incorrectly describes the easement as a "Private Lane".



446-450 Queen Street, Melbourne ,3000

Can the easement be extinguished as a result of abandonment?

5. The easement has not been extinguished as the Council does not have the power to close or discontinue the easement . Even if Council proceed to discontinue the private lane (road), it would not extinguish the easement.

Abandonment cannot be established by the council as a reason for Discountenance of PL5266. The gates on the North end of PL5266 **have not** been erected for 30 years, they were illegally erected by the Munro family post 1996. Many requests have been made for the removal of these gates, the situation still has not been remedied. Recently, we contacted The Land Survey Department of the City of Melbourne to request the removal of the gates by their tenant. We were informed that a Letter had been sent.

As shown in Case Law below.....

COMMON LAW ABANDONMENT

5.1 At common law, the servient owner has the burden of proving that the easement has been abandoned To determine whether an easement has been abandoned, the court will look at the intention of the dominant owner. For intention to abandon to be established, the dominant owner must have 'demonstrated a fixed intention never at any time thereafter to assert the right himself [sic] or to attempt to transmit it to anyone else'. This has been taken to require knowledge of the easement by the dominant owner.

It has been consistently acknowledged that intention to abandon is therefore very difficult to establish. In Shelmerdine v Ringen Pty Ltd, Brooking J stated that:The cases – one only has to consider Treweeke's Case – show how hard it is to establish abandonment notwithstanding what might appear to the layman to be a strong case for abandonment.

Obstruction of access to an easement does not necessarily establish that the dominant owner intended to abandon it. In Treweeke v Thirty Six Wolsely Road Pty Ltd¹ the High Court held that a right of way had not been abandoned despite being obstructed by a vertical rock face, bamboo and other impassable vegetation, a pool that was constructed over parts of it, and being fenced off by both a wire and an iron fence.

A recent Victorian decision held that an easement of carriageway had not been abandoned, despite the erection of a garage wall obstructing it. The application failed partly because it would have been possible for the dominant owner to insert a door into that wall at some future time. In making the ruling, Kaye J distinguished between cases such as Treweeke, where a servient owner had obstructed an easement with the dominant owner's acquiescence, and the case at hand, where the dominant owner had created the obstruction.

At common law, non-use alone will not be sufficient to prove abandonment. Even though section 73(3) of the Transfer of Land Act states that 30 years of non-use or non-enjoyment of an easement 'shall constitute sufficient evidence that such easement has been abandoned', it does not alter the common law meaning of abandonment. In Wolfe v Freijah's Holdings Pty Ltd, Tadgell J held: any non-user for a period of time is relevant, but not necessarily decisive. S 73(3), a purely evidentiary provision, enables the servient proprietor making the application to rely on 30 years' non-user or non-enjoyment in order to make out a prima facie case of abandonment, but no more.

6. "The Easement" functions as an open stormwater drain, that benefits the Dominant Title holders.

There is no underground storm water sewer on this easement. Stormwater from all the dominant titled properties simply drains directly on this bluestone open drain.

Below ground there is a sewer that also is there for the benefit if the dominant title holders.



446-450 Queen Street, Melbourne ,3000

5.1

Has the City of Melbourne adhered to its own" Policy Document on Road Discontinuance and Sale" for this proposal?

7. The City of Melbourne has failed to adhere to its own" Policy Document on Road Discontinuance and Sale" for this proposal to Discontinue PL5266

We refer to this Policy as the Melbourne city Council has not properly adhered to its requirements. **attached appendix 4**

(7.1)

(a) A development proposal for the site, which proposes to incorporate the road or lane, **has not** been submitted and approved.

(b) Planning Amendment C245 is still with the Minister and has **yet to be approved**.

(c) Any plans for the redevelopment of the Munro Site remain private . The only correspondence was the issuance of a notice dated 25 October 2016, **vaguely presents ideas incorporating a community hub** in PL5266. **See Proposal 1.0**

If plans have been submitted to "Council QVM Project Team" by their joint venture partners PDG they should be exhibited to the title holders to alleviate any concerns.

Referring to the City of Melbourne's 'Road Discontinuance and Sale' Policy

In reference to Section 2 it declares that

*".....2. **Before consideration is given to a road discontinuance, a development proposal for the site, which proposes to incorporate the road or lane, must be submitted and approved.** This is not however required for roads outside of the CBD Laneway Study area, if the Group Manager Development and Statutory Services deems the proposal is of a minor nature and would achieve a public benefit in improving security, safety, health or amenity issues."*

"The easement" Labelled PL 5266 by the council lies inside the CBD Laneway Study area.

MELBOURNE PLANNING SCHEME
LOCAL PLANNING POLICIES - CLAUSE 22.20 PAGE 1 OF 11
22.20 CBD

This policy applies to all existing and proposed laneways and all land with a boundary to a laneway in the Central Business District bounded by Flinders Street, Spring Street, Victoria Street, Peel Street, LaTrobe Street and Spencer Street, excluding the RMIT University.



446-450 Queen Street, Melbourne ,3000

5.2

Have the Applicants(QVM Project Team) discussed their proposals with all potentially affected persons before lodging the application with Council?

(7.2) The Applicant who owns the adjacent land (the "Council" QVM Project Team) have failed to discuss their proposals **with all** potentially affected persons before lodging the application to discontinue the easement PL 5266 with" Council."

The "Council" QVM Project Team is proposing to enter *into an entrepreneurial enterprise in developing the Munro Site* that involve contracts and agreements with a Private Development Company PDG.

As a result of this association Transparency it is vital that any process that the" Council " engages in, it must act with caution in exercising its power and follow due process as per its own policy document 'Road Discontinuance and Sale' Policy.

5.3

Beyond the Power of the Melbourne City Council?

(7.3) The council is the Responsible Authority and also the Entrepreneurial Developer in this proposal (Applicant)and it has failed in its obligation to investigate and understand the impacts of the discontinuance on others' legal and user rights.

(7.4) The proposal to Discontinue PL5266, if successful, is intended to extinguish the rights of carriageway and all other implied easement rights for the "title holders".

(7.5) We submit that the attempt to extinguish the existing easement right of way is in contravention of our legal rights and beyond the power of the Council.

The statement in the certificate of title that appurtenant to the land owned by the registered proprietor is an easement is conclusive evidence that the registered proprietor, is entitled to the easement rights.

Below is the Statute that supports our position...

APPURTENANT TO LAND

Easements are not merely contractual rights, even if they are created by an agreement. Once created, they are property rights attached to the dominant land. The legal term for this is that they are 'appurtenant' to the land. The right to use the easement can be exercised by anyone who derives title from the dominant owner. This means that when the dominant land is sold, the new owner acquires the easement along with the land. The new dominant owner can exercise the rights enjoyed by the previous owner without needing to enter into a new agreement with the servient owner.



446-450 Queen Street, Melbourne ,3000

Easements implied by statute

Section 62 of the Property Law Act

At common law, it was customary to include in conveyances of land certain 'general words' to ensure that interests and rights enjoyed by the vendor passed to the purchaser, including all of the easements that benefited the land prior to the sale. In order to shorten the length of conveyances, legislation was enacted to deem the general words to be included in all conveyances. 'Conveyance' is widely defined, and includes an instrument of transfer'

Section 62 of the Property Law Act 1958 (Vic) (Property Law Act) deems conveyances of land to include 'all ... privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof'.

This provision applies to transfers of land under the operation of the Transfer of Land Act 1958 (Vic) (Transfer of Land Act) as well as to transfers of land under the previous deeds-based system of title.

The effect of section 62 of the Property Law Act is that any easements or covenants or other interests attached to the land pass with it, regardless of whether they are specified in the instrument of transfer. In addition, section 62 may also operate to convert revocable licences into easements.

5.4

Does the proposal fall in line with Melbourne's Planning Scheme's Clause 22.20 of CBD lanes and Heritage Overlay 7?

The Council has not disclosed what it intends to do with the parcel of land it intends to discontinue part PL 5266 and consolidate; we don't really know if the proposal follows the guidelines in The Melbourne Planning Scheme's Clause 22.20 CBD Lanes?

Clause 22.20 General Objectives are...

- ...'To ensure that the unique and valued characteristics of Melbourne's laneways are maintained and enhanced through appropriate built form outcomes of future
- To ensure that the unique and valued characteristics of Melbourne's laneways are maintained and enhanced through appropriate built form outcomes of future development.
- To maintain and improve the city's lane way network and encourage the creation of new lanes and connections.
- To encourage activity, vitality and interaction between public laneways and adjacent private uses.
- To protect and where possible create views along lanes that provide a visual link to other streets and lanes in the pedestrian network, or which terminate at notable buildings or landmarks.
- To recognise lanes that provide for essential servicing and vehicular access and to ensure that new development does not adversely effect or impede the operation of these functions'

Council intends to reduce this easement (laneway) and claim the land ,which may ,in future be sold off to a developer.

Under its stewardship of CL 1184 and management The "Council" has failed to protect the valued Heritage characteristics of the CL 1184.



446-450 Queen Street, Melbourne ,3000

Given that these buildings are in Heritage Overlay 07 area of the Queen Victoria Market, have the appropriate planning permits been issued by the City of Melbourne?

As Per H07 43.01-1a permit is required when "*Externally paint a building if the schedule to this overlay identifies the heritage place as one where external paint controls apply*"

As per "*Schedule to the Heritage Overlay*"..... **External Paint Controls do apply in H07.**

The graffiti has created a 'shady' environment and there are real safety concerns with lots of drug users, vandals, drug deals etc. Prior to these works it was not the case.

My tenants in Franklin St and Queen street tell me they now no longer feel safe in these laneways.

The lanes are over 150 years old and paved with Bluestone, whose heritage aesthetic has been absolutely decimated by the overwhelming nature of these conflicting street 'works'.

see Attachment Grafitti infograph.

5.5

Resolution

We have made several requests for the gates to be removed ,this was done to enable the Title Holders to exercise their lawful use of the Right of Way.

10.0 We advise Council that should Council:

- (a) take any further step in contravention of our rights;
- (b) fail; within 28 days to remove the gates blocking our right of way;

We propose to commence legal proceedings against Council seek an injunction and damages.



446-450 Queen Street, Melbourne ,3000

6.0 In summary

In summary, our submission demonstrates that the Charles Palmers clear intent was that our property would have right of carriageway over this easement in perpetuity. The attempt by the City of Melbourne Council to extinguish our right of way over the easement PL5266 and CL 1184, is in contravention of our legal rights and beyond the Councils power. Unless the matter can be resolved, we intend to issue court proceedings.

We would rather avoid the costs and expense of litigation and are prepared to settle the dispute between us on the following basis;

- 1) At this stage the Councils proposal is **premature** and should be deferred to a later date when;
 - (a) The plans for the Munro site have been submitted and approved.
 - (b) When Planning Amendment C245 is finally Gazetted by the Planning Minister.
- 2) Discussions can resume when we know how the Councils re-development will impact our property.
- 3) We would have no objection to declaring CL1184 as a public highway, so long as; our easement rights of carriageway are preserved.
- 4) We would have no objection to declaring PL5266 as a public highway, so long as; our granted and implied easement rights are preserved.

This submission is made on behalf of the Title Holders.

We would be happy to discuss this matter further when the timing is right.

Yours Faithfully,

PETER PAPAGEORGIU

On behalf of the Title Holders

Tramere Pty Ltd

The Partnership V.S & P.H Papageorgiou

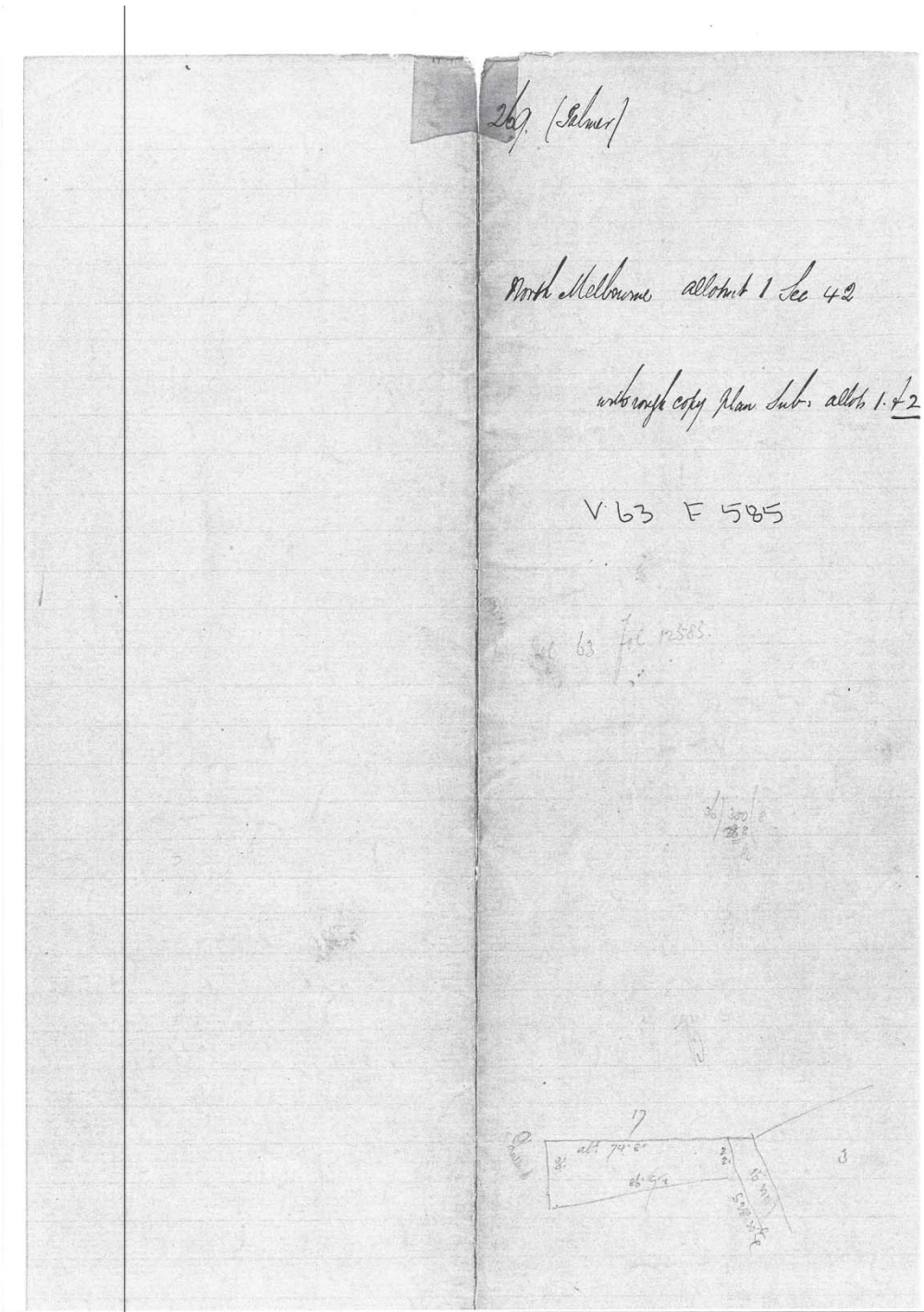
Marrig Pty Ltd



446-450 Queen Street, Melbourne ,3000

9.0 APPENDIXES

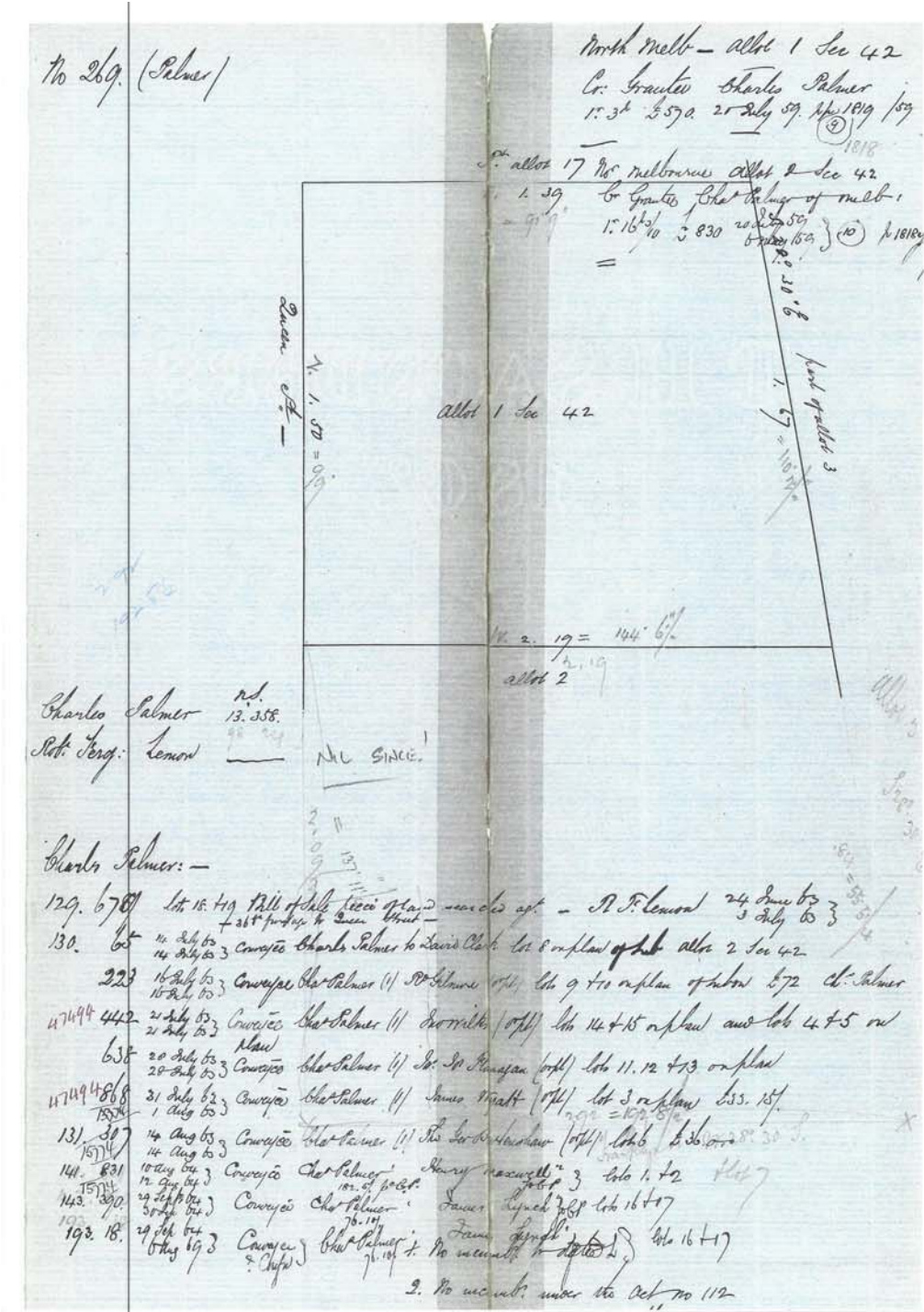
Appendix 1.1- Subdivision of Crown Allotment 1+2 Section 42 By Charles Palmer PAGE 1





446-450 Queen Street, Melbourne ,3000

Appendix 1.3- Subdivision of Crown Allotment 1+2 Section 42 By Charles Palmer PAGE 3





446-450 Queen Street, Melbourne ,3000

Appendix 2.2 - Original Legal Examiners Notes PAGE 2

11 th Nov 1844	Lynch	Montgomerie	Save & require consents
16 th 244. 480	to	£200 paid off	
Same land	for Black Lawrence & Mrs Geo Dougherty met etc.		Require proof of the Sett ^l of 17 th Dec 1844 set out in Secret Certif. with proof that all m ^o Melbourne have been got in a got rid of.
1 st Sept 1845	James Lynch of Hotham dealer became insolvent & John Halper was appointed trustee		
1 st Sept 1845	Matthew Glassford was appointed trustee in Halper's estate divested from Halper.		
30 th Nov 1847	Glassford	Conveyance of of his estate by deed a sale for £60	
270. 691	to		
Same land	Mrs Geo Greave w ^{ife} Ship Chandler	at wife	24 th Dec Demand on Comm ^{rs} List
12 th Sept 1842	Greave	Contract for Sale for £685.	Require Banked Receipts
Same land	to John J. Summing		
		He applies for the land in Secret Certif with right of way over the roads.	See Mr. Wiseman's for dimensions of the roads & his drafts certifying conveys to himself & wife.




446-450 Queen Street, Melbourne ,3000

Appendix 3.1 - First Original Torrens Title PAGE 1

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Entered in the Register Book
Vol 1438 Fol 287/1-38

CANCELLED


VICTORIA.

PARCELS INDEX
SECONDARY STORAGE
Registrar of Titles.

Certificate of Title,

UNDER THE "TRANSFER OF LAND STATUTE."

ORIGINAL CERTIFICATE.
NOT TO BE DEALT WITH OUTSIDE THE TITLE OFFICE.


Delivered on-line by LANDATA®

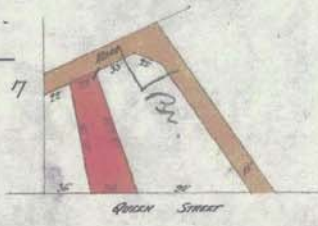
John Frederick Dunning of Number 5 Queen Street in the City of Melbourne Auctioneer

is now the proprietor of an Estate in Fee-simple, subject to the Encumbrances notified hereunder in All the piece of Land, delineated and colored red on the Map the margin, containing ten perches and two tenths of a perch or thereabouts being part of Crown Allotment one of Section fortytwo City of Melbourne, County of Bourke Together with a right of carriage way over the road delineated and colored brown on the said map

Dated the eighth day of March One thousand eight hundred and eighty-three.

CANCELLED


Registrar of Titles. 10
ENCUMBRANCES REFERRED TO.



The measurements are in feet and inches

T01438-438-1-1

WARNING: This document provides an image of cancelled title. It is not a statement of the Register. It is not a statement of the Register. It is not a statement of the Register. It is not a statement of the Register.



446-450 Queen Street, Melbourne ,3000

Appendix 3.2 - First Original Torrens Title PAGE 2

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Vol.		fol.		Transfer		Application 16567	
NATURE OF INSTRUMENT.	DATE AND HOUR OF ITS PRODUCTION.	NAMES OF THE PARTIES TO IT.		NUMBER OR SYNDICATE NUMBER.			
<i>Transfer</i>	<i>The 12th June 1865 at 3 pm</i>	<i>John Frederick Lanning to Henry William Blackett</i>		<i>2149504</i>			
		<i>James Lanning As Attorney for J.F.L.</i>					
		<i>Vol 1704 fol 340679 ✓</i>					

Delivered on-line by LANDATA®

WARNING This document provides an image of a cancelled folio of the Register. It is not a statement from the register of subsisting information in relation to the land to which it refers.



446-450 Queen Street, Melbourne ,3000

Appendix 4 - Melbourne City Council Policy Document on Road Discontinuance and Sale

<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/road-discontinuance-policy-explanatory-notes.pdf>

Appendix 5-

Graffiti Info Graph Attached to Email.

POLICY

ROAD DISCONTINUANCE AND SALE

1. Council only favours the discontinuance and sale of roads when this leads to a public benefit and/or supports appropriate development.
2. Before consideration is given to a road discontinuance, a development proposal for the site, which proposes to incorporate the road or lane, must be submitted and approved. This is not however required for roads outside of the CBD Laneway Study area, if the Group Manager Development and Statutory Services deems the proposal is of a minor nature and would achieve a public benefit in improving security, safety, health or amenity issues.
3. Central city roads that are graded A in Council's CBD Laneway Study cannot be discontinued and sold.
4. Lands subjected to a road discontinuance shall be purchased at a price not less than that determined by a registered Valuer. Council will not however require payment (other than reimbursement of Council's associated reasonable costs) for clearly privately controlled roads currently in the same ownership as other significant abutting lands. In such a case the application would need to be by, or on behalf of, the actual title owner of the road.
5. No road shall be discontinued and sold without first assessing:
 - 5.1. the quality and overriding public benefit of an applicable overall development;
 - 5.2. the requirements of the emergency service providers and the statutory service authorities;
 - 5.3. the effects on Council infrastructure and services including garbage collection and cleansing services;
 - 5.4. 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);
 - 5.5. the historic significance of the road, its paving and its pattern and the road's present and potential contribution to the pedestrian and vehicle networks. Reference shall be made (where appropriate) to the Council's CBD Laneway Study as set out in the Melbourne Planning Scheme and City Plan;
 - 5.6. the appropriateness of any proposed replacement pedestrian, vehicle or servicing arrangements and their consistency with Council policy;
 - 5.7. strategic planning implications and heritage issues; and
 - 5.8. any other matter relevant to the proposal under consideration.
6. No road shall be discontinued and sold without first receiving:
 - 6.1. an unconditional bank guarantee for a sum sufficient to more than cover an estimate by Council of all associated costs likely to be incurred by Council, regardless of whether the application is successful or not, or is withdrawn;

6.2. a written undertaking from the owner of land abutting the road to indemnify Council against all claims in respect of the discontinuance and sale of the road, including all legal and other costs; and

6.3. ten (10) copies of an A4 plan, prepared by a licensed surveyor, showing the extent of the road to be discontinued.

7. No road shall be discontinued and sold, unless clearly privately controlled and currently in the same ownership as abutting significant lands, without first receiving a written undertaking from the owner of land abutting the road, to purchase the road at the market price not less than that determined by a registered Valuer, should Council resolve to discontinue and sell the road.

8. The consultation requirements of the Local Government or the Planning and Environment Acts must be met, including the advertising of a proposal in at least two newspapers and written notice being forwarded to the owners and occupiers of all properties abutting the subject portion of road and to any other persons likely to be affected by the proposal. A notice of the proposal is also to be placed at the entrance to the road. All objectors will be considered by a Special Council Committee and a report presented to Council by the Committee together with recommendations.

9. The owner of the land abutting the road giving Council a bank guarantee, to an amount relative to the nature of the road discontinuance and the abutting properties, buildings and development, to ensure site consolidation and/or compliance with other conditions for approval of the proposal.

10. The owner of the land abutting the road must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987 with Council, to ensure compliance with conditions for approval of the proposal. Council will incur no related costs and the agreement should be registered on the title to the abutting land.

11. In the case of a related development, the approved road closure shall not occur until bone fide contracts have been entered into to erect the approved development.

ROAD DISCONTINUANCE AND SALE APPLICATIONS

EXPLANATORY NOTES (JANUARY 2010)

These notes must be read in conjunction with Council's Road Discontinuance and Sale Policy (approved on 25 May 1999) ("the Policy") pursuant to Clause 3 of Schedule 10 of the Local Government Act 1989 ("the Act"). (See [DM3919394](#)).

The above provisions apply to the removal of legal rights and encumbrances from roads as defined in the Act. They do not relate to the closure of roads to traffic under Schedule 11 of the Act.

The discontinuance provisions of the Act can be used to close both private roads and roads under Council's care and management, including public highways on Crown land. The subject lands, excepting the Crown lands, vest in Council on notice of the discontinuance in the Government Gazette. Council is then able to dispose of the land or retain the land for municipal purposes.

Council's powers to discontinue roads are discretionary, meaning Council can decide to not progress an application. An applicant has no formal rights of appeal to such a decision.

Management of a road discontinuance application

Council's powers to discontinue roads have been delegated to Manager Planning and Building ("Discontinuance Delegate") and powers of associated administrative functions have also been delegated to other Council officers.

Council's Land Survey Team manages the discontinuance aspects of a proposal and should be the first contact point for all enquiries.

Terms of sale of land affected by a road discontinuance

Council's powers to sell the land subjected to a road discontinuance have been delegated to Manager Property Services.

Council's Property Services Branch manages the sale of the land and associated issues including valuation and public consultancy.

The Policy requires a full market value sale for almost all discontinued roads not on Crown land. An exception is for a clearly privately maintained road in the same ownership of significant abutting lands. There should be no potential public claims over the road, effectively meaning the road should not be readily able to be accessed by the general public. In such a case the application needs to be made by or on behalf of that registered proprietor.

Reporting to Councillors

All officers when exercising delegated powers must comply with the Policy and meet the requirements of Council's General Delegations Policy (See DM3295160). Otherwise a report to Council via the appropriate standing committee must occur.

A Councillor Briefing Paper should be considered for any discontinuance application beyond a minor nature.

General

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.

Applicants should investigate and understand the impacts of discontinuance on others' legal and user rights.

Applicants should discuss their proposals with all potentially affected persons before lodging an application with Council.

Council only favours a discontinuance and sale of a road when this leads to a public benefit and/or supports appropriate development. These standards are set out in Clauses 1 and 2 of the Policy. Therefore in many cases a planning permit must be first issued for an associated development, before the discontinuance can be formally considered by Council or delegate. The need for a permit is determined by the Policy or by the Discontinuance Delegate. Any relevant planning permit would not be able to be acted on until the relevant portion of road was formally discontinued and sold.

The issuing of a relevant planning permit does not automatically guarantee that Council will ultimately approve the discontinuance application, as its approval will be dependent on many non-planning matters. These include assessment of submissions received when the formal application is advertised to potentially affected persons and the public.

Application

An application must be in writing and forwarded to Council's Team Leader Land Survey. The application should include the following:

- Evidence that the proposal satisfies the necessary public benefit or development requirements of Clauses 1 and 2 of the Policy.
- A copy of a plan clearly showing the extents of the road proposed to be discontinued.
- Photos of the subject land and abutting buildings and fencing etc.
- Full, legible and current copies of titles and deeds (from Land Victoria/Registrar General's Office) of all lands abutting the road and of the road itself, including any other land which may have a benefit to the road.
- Detailed advice on the consultancy that has been carried out with potentially affected parties and the opinions/stances of those persons.

Applicant's responsibilities after an initial Council approval.

Council's consent, if given, will be subject to appropriate conditions, including those of the public service authorities and the assessment of submissions.

Before an application can continue, the owner of abutting land must give Council:

- An unconditional bank guarantee for a sum sufficient to reimburse all of Council's reasonable advertising, valuation, gazetting and legal costs, regardless of whether the application is successful or not, or is withdrawn. This will typically be in the order of \$10,000 to \$20,000.
- A written undertaking to purchase the road, if Council determines to discontinue same, for a price not less than that determined by a registered valuer.
- A written indemnification of Council against all claims in respect of the discontinuance and sale of the road proposed to be discontinued, including all legal and other costs.
- A plan for road discontinuance purposes prepared by a licensed surveyor to the satisfaction of Team Leader land Survey. (Note on occasions this can be deferred to the outcome of the necessary public consultancy).
- Any other information deemed necessary by Council.

Advertising/public consultancy

The Act and the City of Melbourne's consultancy requirements demand that a proposal must be advertised by Council to all potentially affected persons and to the public by newspaper advertising. This must occur after Council's initial approval of a proposal and satisfactory receipt of the above information from the applicant.

Currently the public advertising is limited to the Age Newspaper but can be extended to also include a more locally distributed newspaper.

The proposal continues to be managed under delegated powers if no written submissions are received. Any written submissions, even if positive, are assessed by Council's "Submissions (223) Committee" that meets monthly. That Committee must then report with recommendations to Council, via a Standing Committee (currently the Planning Committee). Applicants and objectors are able to attend and present at both the Submissions Committee and Standing Committee meetings. They are also able to provide a written statement to the Council meeting.

After advertising

All of Council's initial approval conditions must be met before the road discontinuance is gazetted and the land subsequently sold by Council. Some of these conditions may however not be able to be satisfied until after the road is sold and other actions undertaken. For instance a typical requirement is the consolidation of the discontinued road with the applicant's abutting land and consolidation cannot occur until the applicant owns both lands

It is then necessary for a future owner to give Council a related substantial bank guarantee, to ensure that outstanding matters, such as site consolidation, are eventually performed to Council's satisfaction. On occasions the future owner may also be required to enter into an agreement pursuant to Section 173 of the Planning and Environment Act with Council. This ensures compliance with conditions which may include a particular development proceeding.

Public Authorities

Section 207C of the Act saves the rights powers and interests held by a public authority in a discontinued road.

Land Survey Team will refer any application to those authorities and provide copies of their responses to the applicant. The initial approval conditions will include those requirements and the Contract of Sale likewise

It is important that an applicant pursues those matters privately with the authorities to understand and meet their requirements

Enquiries

Enquiries on land valuation, application advertising, the hearing of submissions, sale contract conditions, the gazetting of the road discontinuance and sale of the road, should be referred to Council's Property Services Branch which can be contacted on telephone 9658 9312.

All other enquiries should be referred to Council's Land Survey Team which can be contacted as shown below.

Telephone	9658 8688	Address	Land Survey Team Melbourne City Council GPO Box 1603 MELBOURNE VIC. 3001
Email	Survey@melbourne.vic.gov.au		

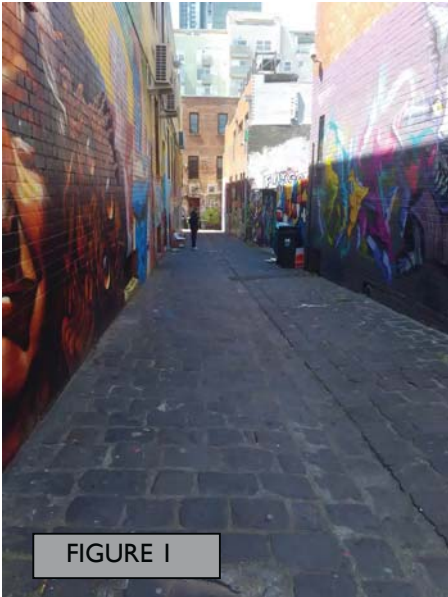


FIGURE 1



FIGURE 2

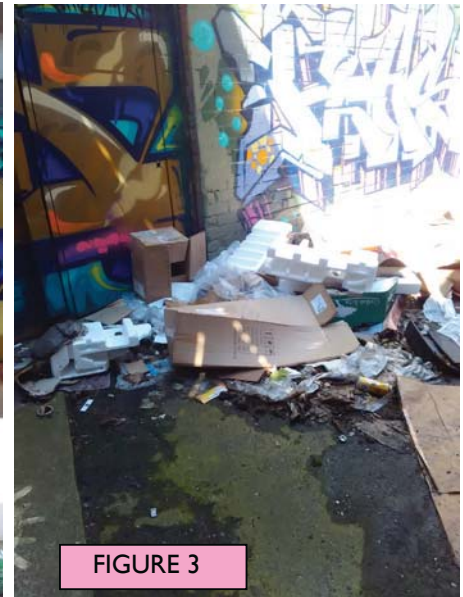


FIGURE 3

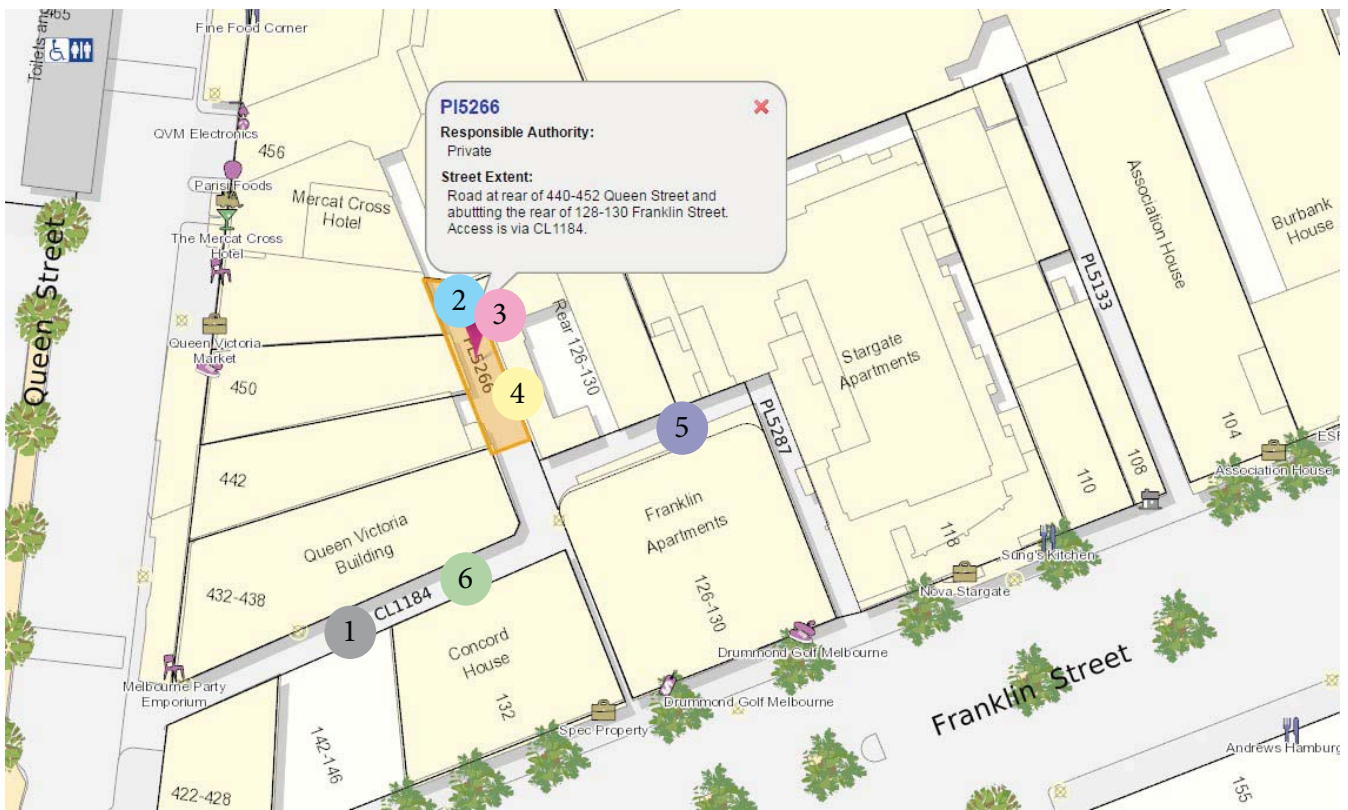


FIGURE 4

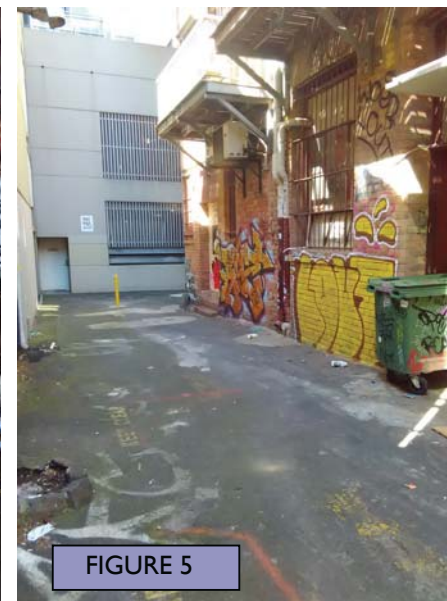


FIGURE 5

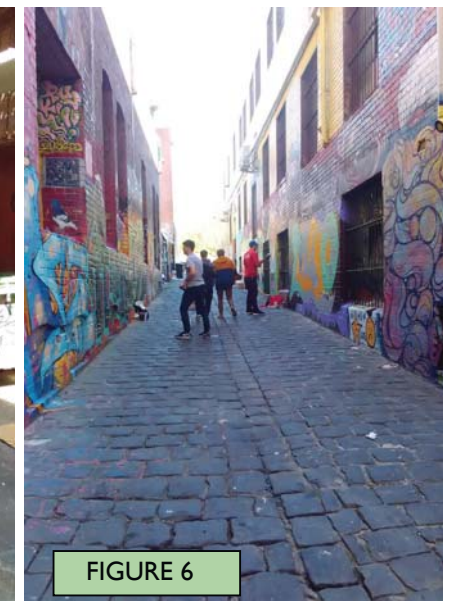


FIGURE 6