

Management report to Council

Agenda Item 6.4

Requested Discontinuance and Sale of Corporation Lane, CL1079, Melbourne

Council

Presenter: Angela Meinke, Manager Planning and Building

26 April 2016

Purpose and background

1. The purpose of this report is to recommend refusal of a request to discontinue and sell Corporation Lane, CL1079, Melbourne, being the road shown shaded on the plan in Attachment 2.
2. The application was lodged with Council by the University of Melbourne who are the owners of the properties known as 165 to 171 Berkeley Street and 712-746 Elizabeth Street Melbourne, which abut the northern portion of the Road.
3. The road is currently under Council's care and management and provides vehicle, pedestrian and light and air access to the land owned by the University of Melbourne and to properties at 224, 226 and 228 Pelham Street Melbourne.

Key issues

4. Public consultation in respect to the proposed discontinuance was undertaken (Attachment 2). Three submissions (Attachment 3) objecting to the proposal were received from Mr Reuven Blecher, Ms Teresa Coldabella and Mr Tony Williams, the owners of 224, 226 and 228 Pelham Street, Melbourne (Objectors).
5. The Objectors strongly opposed the east west portion of the road contained in TP947183U being discontinued on the grounds summarised below from the submissions and further requested that it be declared a Public Highway for the avoidance of doubt as to the ownership and status of the road.
 - 5.1. The road provides a buffer to the impact of future development to the north.
 - 5.2. The road provides flexibility to activate both front and rear of the properties along Pelham Street and an alternative method of servicing.
 - 5.3. There are windows, exhaust vents and meter boxes accessed from the road.
6. Mr Tony Williams also objected to the full length of the north south portion of the road contained in TP947194P being discontinued as he considered it would limit the ability of small vehicles gaining access to the rear of his property at 228 Pelham Street.
7. The recommendation reflects the recommendation from Council's Submissions (section 223) Committee meeting held on 3 March 2016.

Recommendation from management

8. That Council:
 - 8.1. Refuses the proposal to discontinue and sell Corporation Lane CL1079 for the reasons that:
 - 8.1.1. the proposal (particularly the East West portion) will have an unacceptable impact on the three adjoining land owners
 - 8.1.2. there are no clear public benefit reasons for the proposal
 - 8.1.3. there has been a lack of appropriate engagement by the University of Melbourne with the three affected adjoining land owners.
 - 8.2. Notifies in writing every person who has lodged a submission and the applicant of this decision and its reasons for the decision.

Attachments:

1. Supporting Attachment
2. Plan and Public Notice
3. Application and Submissions

Supporting Attachment

Legal

1. Where a Council proposes to discontinue and sell a road under section 206(1) and clause 3 of Schedule 10 of the *Local Government Act 1989* (Act), section 223 of the Act requires it give public notice of the proposal and consider all submissions received prior to making its decision.

Finance

2. Council's costs associated with managing the application have been met by the applicant. The costs incurred by the applicant are regardless of whether the application is successful or not or is withdrawn. These costs include property valuation, general advertising, gazetting of the Road discontinuance in the Government Gazette and associated legal costs.
3. Should the application be supported, the affected land will vest in Council free of all encumbrances, following publication of the discontinuance of the road in the Government Gazette. Council will consequently then be able to sell the land to the applicant.

Conflict of interest

4. 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

5. Public consultation in respect to the proposed discontinuance and sale was undertaken in accordance with the Act. Overall the consultation involved:
 - 5.1. advertising in The Age on the 21 January 2016
 - 5.2. a letter being sent to the owners and occupiers of abutting properties
 - 5.3. all of the Service Authorities being notified by e-mail of the proposal.
6. Three submissions objecting to the proposal were received and considered by the Submissions (Section 223) Committee meeting held on 3 March 2016.

Relation to Council policy

7. Council's Policy dated 25 May 1999 for the discontinuance and sale of roads is supported by the delegation of Council's powers in relation to discontinuance and sale of roads to relevant Council officers. The actions associated with this report and the recommendations of this report, accord with Council's policy.

Environmental sustainability

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

PUBLIC NOTICE

MELBOURNE CITY COUNCIL

Proposed Discontinuance and Sale of Corporation Lane, CL1079 Carlton

Notice is given pursuant to sections 206(1) and 223 of the *Local Government Act 1989* ('Act') that the Melbourne City Council ('Council') proposes to discontinue the road known as Corporation Lane, CL1079 Carlton as shown hatched on the below plan and sell the discontinued road to the University of Melbourne ('Proposal').

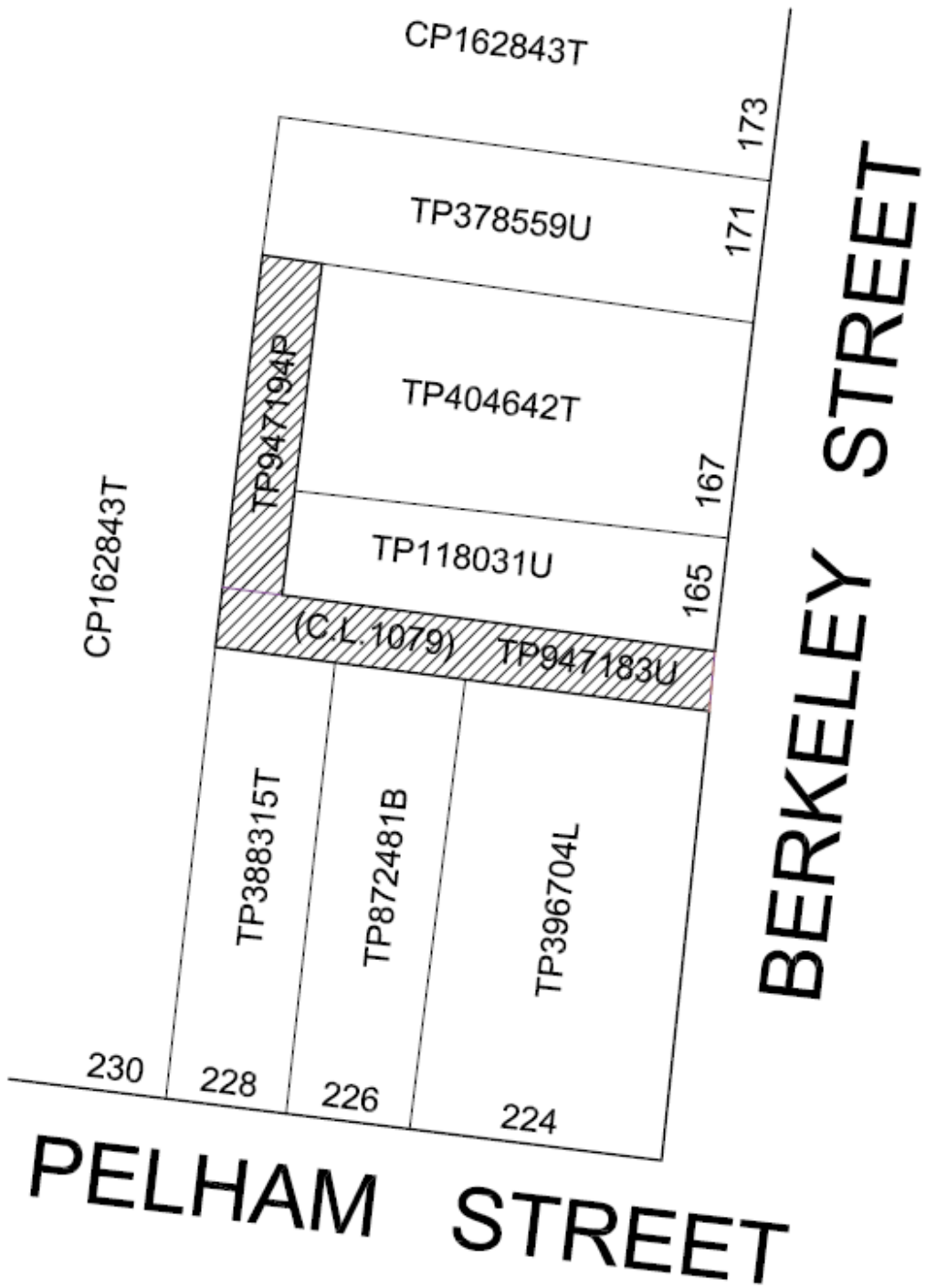
Any person may make a written submission on the Proposal to the Council. All submissions received by the Council on or before 19 February 2016 will be considered in accordance with section 223(1) of the Act, by the Council's Submissions (Section 223) Committee ('Committee').

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

Written submissions should be marked 'Proposed Discontinuance and Sale of Corporation Lane, CL1079 Carlton' and addressed to the Manager Governance and Legal, Melbourne City Council, Town Hall Administration Building, 120 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.



Not to Scale

Land subject to Discontinuance



Council Lane CL 1079

From: Melissa Browne <melissa.browne@unimelb.edu.au>
Sent: Tuesday, 9 June 2015 7:49 PM
To: Helen Koulouris
Subject: FW: City Ford Road Reserve Purchase (Rear of 165-167 Berkeley Street, Carlton and left-hand side of 165 Berkeley Street, Carlton)

Hi Helen,

Further to previous correspondence on the above matter, the University of Melbourne would like to look at purchasing the above road reserve.

In particular, the University of Melbourne definitely wants to purchase the section of the road reserve at the rear of 165 to 167 Berkeley Street, Carlton, and if possible (subject to adjoining land owners concerns), we would also like to purchase the section of this road reserve that is on the left-hand side of 165 Berkeley Street, Carlton. However, if the adjoining land owner concerns can't be addressed then we will only purchase the section of the road reserve at the rear of 165 to 167 Berkeley Street, Carlton.

The University of Melbourne agrees to the provisions of Clause 3 of Schedule 10 of the Local Government Act 1989, in regards to the above matters, and we note the following:

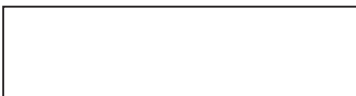
- That all of Council's reasonable associated costs must be met.
- The discontinuation and purchase will be conditional upon public consultation (notice) under that Act, and the consideration by Council of any submissions received in this process. We note that there are a couple of non-University of Melbourne properties abutting this laneway with windows onto this laneway, what appears to be access onto the laneway, etc.. The University of Melbourne would be willing to have easements put in place to protect the rights of these non-University of Melbourne owners.
- The property must be purchased at market value (determined by the City of Melbourne's own valuers'). Please note that we are likely to get the Valuer-General Victoria to provide us with advice on this matter (as we are required when purchasing properties to do this, as well as to seek the Victorian Government Land Monitor's approval).

Can you please let us know the next steps in this process and should you need to discuss this matter, please feel free to call me on 9344 0838.

Kind regards,

Melissa Browne

Manager, Property | Space Management | Infrastructure Services
Ground Floor, 11-13 Lincoln Square South
The University of Melbourne, Victoria 3010, Australia
T +61 3 8344 0838 | melissa.browne@unimelb.edu.au | pcs.unimelb.edu.au



14 February 2016

**Manager Governance and Legal
Melbourne City Council
Town Hall Administration Building
120 Swanston Street Melbourne**

Proposed Discontinuance and Sale of Corporation Lane CL1079 Carlton

Objection on Behalf of –

Ms Teresa Coldebella – Owner of 226 Pelham Street Melbourne

Mr Reuven Blecher – Owner of 224 Pelham Street Melbourne

We write to strongly object to the proposed discontinuance and sale of Corporation Lane CL1079 Carlton as described in the public notice sent to us on 22 January 2016.

Our reasons are as follows-

1. Our properties currently benefit greatly from pedestrian, bicycle and vehicular access to and from the laneway and for, among other things, loading, waste removal and building/site maintenance.

2. The lane provides a buffer to the impact of future development on land to the north, in the form of a guaranteed setback allowing better solar access for the Pelham Street properties.

3. In the next 2 years the owner of 226 Pelham Street is proposing to lodge a town planning application for a residential development on that site that would rely on access to the laneway for light and air as well as vehicular and pedestrian access. During the course of 2015 she carried out feasibility studies and had preliminary discussions with an MCC Planning Officer, a structural engineer and an architect. The proposed development would be designed in accordance with the provisions of the Melbourne Planning Scheme and relies on access to Corporation Lane CL1079 for access and light and air.

4. Under the Melbourne Planning Scheme, the land is covered by a new Design and Development Overlay DDO61A5. The Design Objectives of the Overlay include the following-

“To develop a fine grain urban form”

“To improve the walkability of the precinct by encouraging new laneways and pedestrian connections”

The inner city’s laneway network is a valued and vital part of Melbourne’s urban form and provides insight into the city’s built form evolution. Even small lanes such as this provide some of the most unique public spaces within the city. This lane is interesting and valuable because of its historical character and service function.

The east west portion of this laneway is ideally located as a part of a future through link to Elizabeth Street, possibly as a “shared zone”. The Council should not be selling a Corporation Lane that is likely to contribute to a better outcome for the public realm in this precinct. Council should be retaining control of the lane and encouraging the developer of the land to the west to create a pedestrian link through the site.

5. Laneway access for the 3 properties (224, 226 and 228 Pelham Street) provides the flexibility to activate both the front and rear of the existing and future buildings on the sites. Options include access for pedestrians, small vehicles and bicycles, potential “front door” access for loft homes and other small dwellings off the lane, windows and overhead balconies. This is the kind of “fine grain” urban form encouraged and envisaged by the Planning Scheme.

6. Acquisition of the whole laneway cannot be justified by the argument that the University of Melbourne need to consolidate their holdings to improve the development potential of their site. While this could be argued for the "north-west" portion of the lane, where the University own the land on either side, it cannot be true for the "east-west" portion. At a mere 2.5 metres wide, the additional land would have no impact on the University's future plans, while the loss of the publicly controlled Corporation Lane would have a great impact on the property owners who currently benefit from it.

7. The existing building at 224 Pelham Street has several windows, several exhaust vents and electricity meter boxes at ground level on the boundary with the lane. The building also has a first floor private open space in the form of north facing terrace that is given some protection from future development by the position of the laneway below. The dwelling at 228 Pelham Street has a private north-facing garden at ground level that also benefits from the laneway to its north as a buffer to future development.

8. An important benefit of having a Council controlled laneway adjacent to the properties facing Pelham Street is that it provides an alternative location for in-ground services including sewer, water supply, storm-water drainage and telecommunications. These services may be required or may need to be upgraded if these properties are individually developed or redeveloped as a group. It is often the case that new or upgraded services cannot be accommodated beneath the footpath or road in front of a property and the rear laneway provides a more viable and practical option. We do not want to lose this benefit.

We do not support the sale of the laneway, even if it were to be covered by an easement providing rights of carriage way, and rights of access to light and air. We believe that the interests of the owners of the 3 properties that adjoin the lane and the public interest is best protected by the lane remaining in Council control.

As a publicly accountable authority, only the Council can provide the certainty, transparency and proper process that is needed and preferred by owners of property who benefit from an adjoining laneway.

Furthermore we request that the Council consider declaring the lane a "Public Highway" under the relevant legislation so that the lane may continue to benefit the adjoining properties as it has for many decades.

We each request to be heard separately in support of our objection before the Committee meeting scheduled on 3 March 2016 at 3.00pm at the Melbourne Town Hall.

Teresa Coldebella

Owner of 226 Pelham Street, Melbourne.

Telephone 0425 734 782

Reuven Blecher

Owner of 224 Pelham Street, Melbourne.

Telephone 0467 715 796

Manager Governance and Legal
Melbourne City Council
G.P.O. Box 1603 Melbourne 3001.

Dear Sir,

I refer to a letter from surveyor M/s Maria Tomasetig dated 22nd January, requesting that any reply be directed to yourself and be marked "Proposed Discontinuance and Sale of Corporation Lane, CL1079 Carlton". I do not know what "Corporation" means in the context, nor was I able to find out by telephone call to your office. I identify as the subject what is shown diagrammatically by the plan appended to the letter. I object as strongly as is possible to the proposed discontinuance, for the reasons that follow:

1. Your Council's notice says that Council "proposes" to "discontinue" and then "sell" the land. Reference to reputable dictionaries of Australian usage confirms that "proposes" means the same as "plans, intends and expects". This is reinforced by the plan, which speaks, not of land which would be affected, but unconditionally, of "Land subject to Discontinuance". So the papers speak of a decision already made. It may be that what some of your Council's members expect is that Council will consider the discontinuance, and in doing so expects to take into account the submission the notice invites me to make; but the notice says otherwise. It leaves me with the task of persuading Council to abandon an intention already formed. At the very best it flies in the face of the old adage about the importance of both doing justice and being seen to do so.
2. The papers say nothing about why Council proposes the discontinuance. That, worse than being unhelpful, compels me to guess Council's secret motives, and weakens my ability to oppose the move. The papers do not suggest a desire for judiciously weighing up the merits or otherwise of the discontinuance. They are appalling documents.
3. I am placed in a position of disadvantage relative to the party which appears to have initiated this affair, the University of Melbourne. I understand from your office that the university has been persuaded to part with \$30000 for advertising, in addition to the market value of the land. This fact together with the immense clout the university must have in economic and political terms compared with myself as part owner of a mere 89 square metres of land does not encourage me to believe that any contest is likely to be even.
4. This submission will, the notice says, be open freely to anyone who wishes to know what I have to say. No such entitlement is extended to me to see what the university has had to say. Your Council's officers tell me that the only entitlement I have is under the FOI rules. Apart from the cost of exercising that entitlement, I understand it would not provide

the information until well after the whole matter has been settled. Once again, the thing smacks of unfairness, and improper collusion.

5. Despite being my neighbour (if one may use that term of a vast corporate entity) the university has made no attempt to contact me and so, just possibly, to discover that the discontinuance would cost more than it was worth. It is objectionable that an institution, funded to so large an extent by public funds and, I believe, expecting to avoid most or all municipal rates on the land it wishes to acquire, should be so reckless.

6. The huge development said to be planned for the land adjacent to the lane omits the property in which I hold an interest at 228 Pelham Street Melbourne 3000. This would leave a very odd property boundary next to 228 Pelham Street. If the university could buy 228 Pelham Street for market value or a little more, the acquisition would represent better value, dollar for dollar, than the laneway. So the fact that the university has not approached me to enquire is an oddity which demands explanation. If that explanation is that the university hopes to buy 228 Pelham Street at a price reflecting a drop in value caused by loss of the lane then Council may find itself supporting moves far too smart to be appropriate for a municipal council.

7. Council will, I understand, limit the time for any oral submission by me to three minutes. I have held my interest in 228 Pelham Street for forty years. So what we have is Council unwilling to allow me to take its time for a few minutes longer, quite possibly with less than perfect coherence, because it recognises no obligation on the grounds of fairness or courtesy to have more than 4.8 seconds of Council's time for each year it has been happy to take my payment of rates, despite the matter being a change that would have the gravest consequences for the value of 228 Pelham Street.

8. If Council persists in its plans I shall have no right to appeal. The effect of the discontinuance will be similar to if not more detrimental to my interests than any change of planning zone or issue of a planning permit would be likely to be. In recognising the possibly serious effects of such town-planning events the state provides rights to address review committees or appeal tribunals typically comprising individuals of importance elsewhere against which the three minute limit here must be seen as unjust and seriously absurd.

9. As your records will show, 228 Pelham Street has been owned jointly by me and my wife for 40 years; pending occupation by ourselves, it is retained as a residential rental property as an essential part of our livelihood. We are now both in our seventies; I myself am in poor health (Parkinson's Disease, of many years' standing). It is profoundly upsetting to know that the conduct of both the City of Melbourne and the University of

Melbourne has been such that they will have had no interest in enquiring about or having regard to our circumstances before deciding to make the proposal, In the case of the university, this may be little more than a breach of a code of morality which is quaintly alien to its management's thinking. In the case of the City of Melbourne, I contend that it has a duty to ensure, within the scope of its activities, that it does not assist the predatory threats of an opportunistic university against a small land-holder. 10. The value and amenity of the property at 228 Pelham Street would be disastrously damaged by discontinuance of the lane in ways that include:

- a. Fire safety. The property has two exits - a gate to the east-west lane (TP947183U) and a narrow pedestrian front door from Pelham Street. Any fire that blocked access to the Pelham Street exit would, if the lane were not available, leave the property without an exit, quite possibly with fatal results.
- b. Garbage. The standard bin or bins are kept on the property in the small garden behind the house. This is the only suitable place for them. Council empties them if they are placed on the corner of Berkeley Street and the lane.
- c. Furniture, refrigerators etc. Especially when account is taken of the fragility of plaster-and-lath walls, it is obvious that the back gate to the laneway is indispensable for movement of these objects.
- d. Underground services. It is vital that the lane be available for existing or prospective services such as storm water, sewer and gas.
- e. Parking. The rear of 228 Pelham Street, accessed from the lane, is used to store bicycles. There is room on site behind the house for parking a small car and motor bicycles. It is not used for car-parking at present only because the property is let to impoverished students who do not possess cars; but it is likely to become important in the future. Resident parking is possible nowhere else on the property. Kerbside resident parking in Pelham Street would not solve the problem since, during the hours it is provided, it is generally full. The availability of the north-south section of lane (TP947194P) would be vital for maneuvering small cars to gain access to the property.
- f. Sunshine and boxing in. The huge building the university intends to build immediately to the west of the lane and 228 Pelham Street will blot out a large proportion of sunshine that falls on 228 Pelham Street. Extending that building to occupy the lane would all but eliminate what would remain. I understand it is the medical section of the university that is to occupy the development. Persons associated with it will, presumably, be familiar with the bad effects on human beings, psychologically, of feeling boxed in and, physiologically, of being deprived of sunshine. (Bear in mind that 228 Pelham Street's sole purpose and use is to be a residence. People will still be living there when the offices, classrooms and

laboratories of the university's buildings are silent at night and at weekends.) But I have no reason to suspect that they care; on the contrary!

I hereby request to be heard concerning this proposal.

Yours sincerely,

Anthony Williams.

35 Stanley Street
Bulleen 3015
16th February 2016