

<b>Committee report to Council</b>	<b>Agenda item ) '%</b>
	<b>Council</b>
<b>Proposed Discontinuance and Sale of Part of Powell Lane (CI1012) Carlton</b>	<b>25 September 2018</b>

**Committee** Submissions (Section 223)

**Presenter** Jane Birmingham – Acting Manager Planning and Building

**Purpose and background**

1. The purpose of this report is to recommend the proposed discontinuance and sale, pursuant to section 206(1) and clause 3 of schedule 10 of the *Local Government Act 1989* (the Act), of part of Powell Lane (CL1012), Carlton in accordance with the recommendation from the Submissions (Section 223) Committee.
2. At the Submissions (Section 223) Committee meeting on 2 August 2018 the Committee considered the report at Attachment 1 and made the below recommendation for presentation to Council.

**Recommendation**

3. That Council:
  - 3.1. Discontinue part of Powell Lane (CL 1012) Carlton as proposed on the plan in the public notice published in The Age of 20 June 2018 and sell the resulting land (Land) to the abutting property owners at 236-238 Faraday Street and 18 Powell Lane, Carlton for \$324,000 plus GST subject to the Land being encumbered by an easement of footway (limited in height to three metres above site level) and easement of light (limited in depth to three metres above site level and three metres long from the eastern boundary of the Land) in favour of the property at 232-234 Faraday Street, Carlton, in addition to the sewer easement requested by City West Water, for the reasons that:
    - 3.1.1. the additional easements address the concerns of the owner of 232-234 Faraday Street, Carlton and enables its development in accordance with planning permit TP-2016-1128 to proceed
    - 3.1.2. as the Land was always proposed to be sold subject to the sewer easement requested by City West Water, the additional easements would not have a significant impact on the Land.
  - 3.2. Notify in writing every person who has lodged a separate submission of the decision and reasons for the decision.

**Attachment:**

1. Submissions (Section 223) Committee Report, Agenda item 5.1, 2 August 2018 (page 2 of 13)

## Management report to Submissions (223) Committee

### Proposed Discontinuance and Sale of part of Powell Lane (CL1012), Carlton

**Presenter:** Maria Tomasetig, Acting Team Leader Land Survey

#### Purpose and background

1. This report addresses two submissions (one objection) received to a proposed road discontinuance and sale pursuant to section 206(1) and clause 3 of schedule 10 of the *Local Government Act 1989* ('the Act'), of part of Powell Lane (CL1012), as shown hatched on the attached plan (see Attachment 2).
2. On 19 September 2017 the Manager Planning and Building, acting under sub-delegated Council powers, approved commencement of the discontinuance process subject to conditions which included public consultation (see Attachment 2 for a copy of the public notice).
3. The submissions are in Attachment 3. The main points raised are as follows:
  - 3.1. A proposed development which has been approved for the property at 232-234 Faraday Street Carlton (which abuts the portion of road subject to the discontinuance) relies on the Road for waste management, deliveries and emergency exit.
  - 3.2. The applicant has advised that the only people who appear to access the land are the occupants of 236-238 Faraday Street & 18 Powell Lane, Carlton being the properties owned by the applicant. The property at 232-234 Faraday Street, Carlton has unfettered access via Faraday Street and Tyne Street, Carlton and does not require the Road for access.

#### Key issues

4. The portion of Powell Lane subject to the proposed discontinuance runs east west between the properties known as the 236-238 Faraday Street and 18 Powell Lane, Carlton which are owned by the applicant. The property at 232-234 Faraday Street, Carlton abuts the lane for which there is a gate on the lane providing access into the property.
5. Planning Permit TP-2016-1128 was issued by Council on 19 January 2018 for the property known as 232-234 Faraday Street, Carlton.
6. The plans endorsed to form part of the permit show access off the road (subject to the discontinuance) for waste management and deliveries and obscure glass (at the upper level on the road boundary) to provide light to an internal courtyard.
7. Access could be managed by an easement of way and light in favour of the property in addition to the sewer easement requested by City West Water.

#### Recommendation from management

8. That the Submissions (Section 223) Committee:
  - 8.1. Consider all written submissions in relation to the proposal and hear any person wishing to be heard in support of his or her submission and then make a recommendation to Council.
  - 8.2. Recommend Council notify in writing every person who has lodged a submission of its decision and the reasons for its decision.

#### Attachments:

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

## **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 and sell part of Powell Lane (CL1012), Carlton.

### **Finance**

2. The Road forms part of Powell Lane (CL1012), Carlton. The Road is under Council's Care and Management. If the application is approved and the Road is discontinued, the Act vests the subject land in the Council with the power to transfer the land. The land will be sold for \$324,000 plus GST as detailed in the public notice.
3. 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**

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. The proposal was given public notice. Overall the consultation involved:
  - 5.1. Advertising in the Age on 20 June 2018.
  - 5.2. A letter was sent to the owner of abutting property.
  - 5.3. All service authorities were notified by email of the proposal.

### **Relation to Council policy**

6. The proposed discontinuance and sale complies with the Road Discontinuance and Sale Policy approved by Council on 30 May 2017.
7. It is Council practice to sell the land to an abutting land owner.

### **Environmental sustainability**

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

**Proposed discontinuance and sale of part of Powell Lane (CL1012), Carlton**

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 and sell, part of Powell Lane (C1012), Carlton as shown hatched on the plan below to the abutting land owners at 236-238 Faraday Street and 18 Powell Lane Carlton for \$324,000 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 18 July 2018 will be considered in accordance with section 223(1) of the Act, by the Council's Submissions (Section 223) Committee ('Committee').

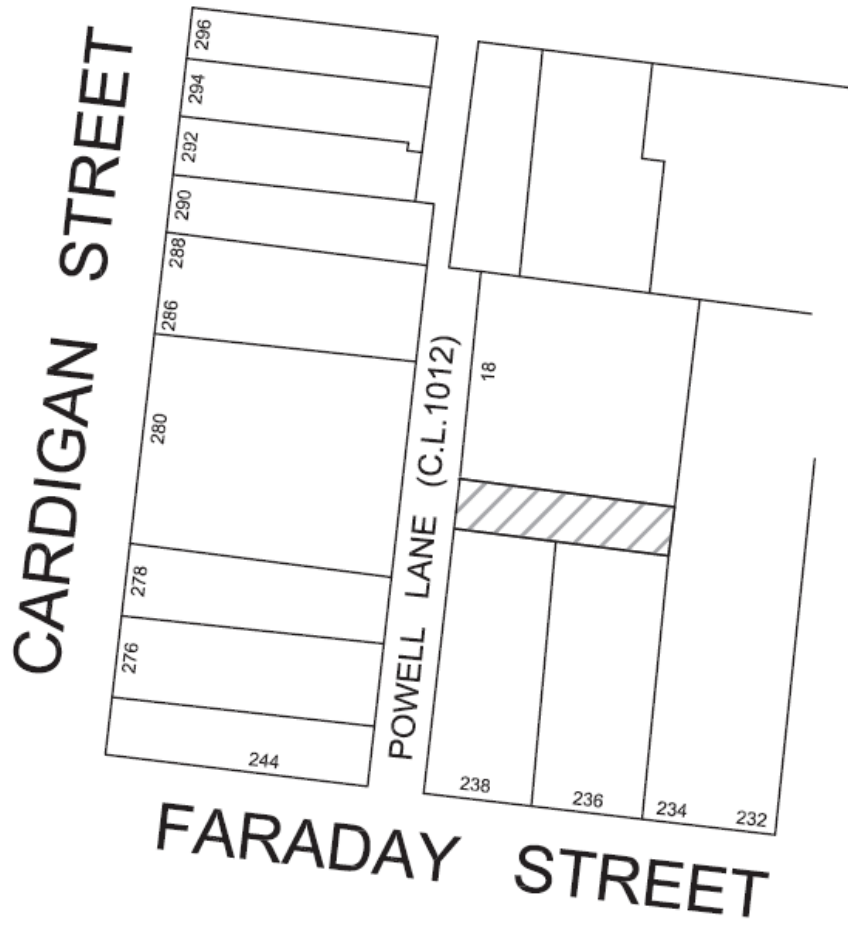
If a person wishes to be heard in support of their submission they must include the request to be heard in the written submission and this will entitle them to appear in person, or by a person acting on their behalf, before a meeting of the Committee, scheduled to be held on Thursday 2 August 2018, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.


Written submissions should be marked 'Proposed Discontinuance and sale of part of Powell Lane (CL1012) Carlton' 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/rly4bj60tdagsg/>

**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).



 Land Subject to  
Discontinuance and Sale



## SUBMISSIONS

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From:

Sent: Tuesday, 17 July 2018 11:20 AM

To: CoM Meetings

Subject: Submission in relation to the proposed discontinuance and sale of part of Powell Lane (CL1012) Carlton

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

Dear Sir/Madam

**Submission in relation to the proposed discontinuance and sale of part of Powell Lane (CL1012) Carlton**

I, together with my parents            and            , am the owners of the properties located at:

1.        Faraday Street, Carlton
2.        Faraday Street, Carlton
3.        Powell Lane, Carlton

(together **the Properties**).

The property located at        Faraday Street, Carlton was acquired by my parents        and        in early 1989.

The properties located at        Faraday Street, Carlton and        Powell Lane, Carlton were acquired by myself and my parents in early 1992.

Since acquiring the Properties, my parents and I have leased the Properties to a range of tenants – predominantly students from the University of Melbourne

The lane subject to discontinuance and sale (the **Lane**) divides        Faraday Street, Carlton and        Faraday Street, Carlton from        Powell Lane, Carlton.

My parents and I have been regular visitors to the Properties since acquiring them and to our knowledge the only people who regularly access the Lane are the tenants who occupy the Properties.

The Lane abuts a vacant space which is part of        Powell Lane, Carlton on which some of the tenants who occupy the Properties park their vehicles.

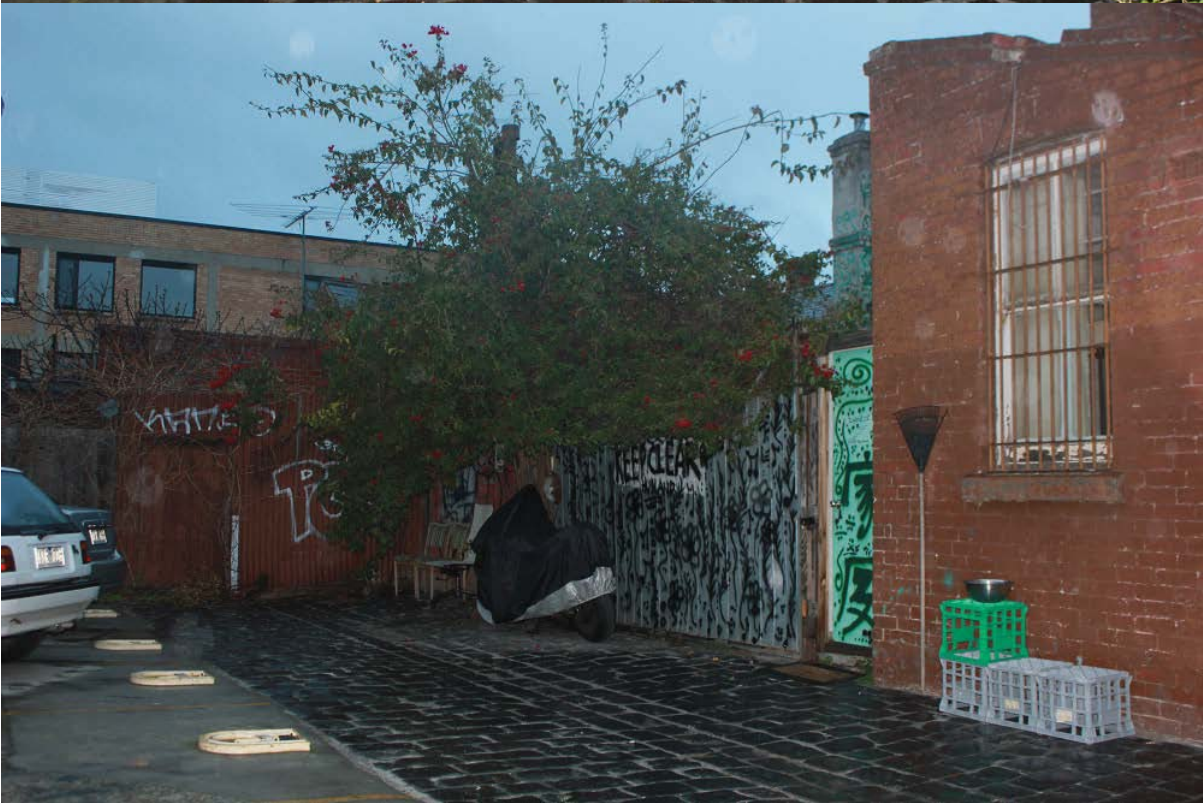
The Lane ends at a fence in which there is a gate to enter the adjoining property located at        Faraday Street, Carlton - which is owned by        . We understand that        also owns the property located at        Faraday Street, Carlton.

Mr \_\_\_\_\_ has unfettered access to \_\_\_\_\_ Faraday Street, Carlton from both Faraday Street, Carlton and Tyne Street, Carlton and does not need the Lane to access \_\_\_\_\_ Faraday Street, Carlton.

To the knowledge of my parents and I, the Lane is not used by anyone other than the tenants who occupy the Properties.

Three photographs which were recently taken of the Lane are attached.









You will see from the photographs that the gate to enter the adjoining property located at Faraday Street, Carlton does not appear to be in use and is overgrown with vegetation.

My parents and I would like to develop the Properties. If we are able to acquire the Lane, this would increase the options available to us to develop the Properties – which would have obvious flow on benefits to the suburb of Carlton.

We are more than happy to pay the purchase price of \$324,000 which has been proposed for us to acquire the Lane.

I would like the opportunity to be heard in person in relation to this submission. Unfortunately I will be travelling for work on Thursday August 2. In this regard, is there any possibility of deferring the hearing until a late date?

Thank you very much for considering this submission and should you have any queries and/or require any further information please do not hesitate to contact me.

Regards

**Terrain Consulting Group Pty Ltd**  
Land Development Services



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Kew 3101 Victoria

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Ref: 18382-L01

10 July 2018

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

**Dear Manager Governance and Legal,**

**Application: Proposed Discontinuance and sale of part of Powell Lane (CL1012) Carlton.**

We advise that this office acts on behalf of \_\_\_\_\_, the owner of No. \_\_\_\_\_ Faraday Street, who wishes to lodge an objection to the above application for the closure and sale of a section of Powell Lane to the rear of No. 236 and 238 Faraday Street.

We also request that Lorenzo Rigoni be heard in support of the following submission at the meeting of the Committee, schedule on Thursday 2 August 2018, at 3:00pm in the Melbourne Town Hall.

The Melbourne City Council Town Planning Department has issued a Planning Permit (TP-2016-1128) dated 19 January 2018, for the develop of land at No. \_\_\_\_\_ Faraday Street to construct a three-storey apartment building with basement and the use of part of the site as a restaurant. The application is currently in the final stage of the planning process and plans have been lodged with council for endorsement. A Section 29 application for the demolition of the site has also been lodged to Council and construction is expected to begin within the next two (2) months, showing the owners commitment to the development.

The proposed development relies heavily on the use of Powell Lane, in particular, the section which is proposed to be discontinued. The discontinuance and sale of the section of Powell Lane will have the following impacts and conflicts with the proposed development.:

**Waste Management & Deliveries**

A detailed Waste Management Plan (WMP) has been prepared in consultation with Melbourne City Council's Waste Management Officer, which relies on access to the site via Powell Lane for the collection of all commercial waste associated with the development.



As the commercial waste bins must not be left out in the public domain at any time, access via Powell Lane is essential in allowing private waste contractors access to the site approximately 4 times a week. As outlined in the Waste Management Report prepared by Low Impact Development Consulting.

The discontinuance of this section of Powell Lane would require a redesign of the proposal to allow for an alternative waste collection point, and as a result could mean that the ground floor restaurant becomes unviable.

The side entrance and exit from Powell Street will also be used to facilitate deliveries to the café/restaurant. This allows the movement of deliveries through the rear of the site to the basement storage area and avoids deliveries being transported from the front entrance, through the café/restaurant where patrons will be sitting and eating.

### Emergency Exit (Building Code of Australia)

As the proposed development contains a restaurant at the ground floor, the laneway access to the site via Powell Lane is essential for the safety of restaurant patrons and residents of the apartment building above. The exit to Powell Lane provides an essential secondary exit in the case of an emergency and is a requirement of the Building Code of Australia, as outlined below:

#### D1.2 Number of exits required

- (a) All Buildings – Every building must have at least one exit from each storey.
- (b) Class 2 to 8 buildings – In addition to any horizontal exit, not less than 2 exits must be provided from the following:
  - a. Each storey if the building has an effective height of more than 25 m.
  - b. A Class 2 or 3 building subject to C1.5.



Figure 1: Aerial view of No. 232-234 Faraday Street and Powell Lane (Apr 2018, NearMap)

The location of the restaurant within the development has been designed to provide the required number of exits in the event of an emergency. If the section of Powell Lane was to be discontinued, safety requirements would be compromised, and the proposed restaurant would not meet the objectives of the Building Code of Australia, relating to *Fire Resistance* and *Access and Egress*.

A copy of the associated Planning Permit and development plans which have been submitted to Council for endorsement have been attached to show the developments reliance on Powell Lane for the collection of commercial waste and emergency exit.

Accordingly, it is submitted that the proposed discontinuance of this section of Powell Lane would lead to considerable impacts regarding the safety and management of the proposed development at No. Faraday Street, which has been permitted by the City of Melbourne (via Planning Permit TP-2016-1128, issued 19 January 2018) and is now in the final stages of the planning process, to be endorsed by Council.

Should you have any queries concerning this matter please do not hesitate to contact or myself on

Yours faithfully,

**Terrain Consulting Group**

Encl.