
STRATEGY AND POLICY REVIEW COMMITTEE
6 APRIL 2009 **GOVERNANCE AND COMPLIANCE**

A8	PROPOSED DISCONTINUANCE AND SALE OF RIGHT OF WAY NO'S.R3193, R3195 & CROMWELL PLACE, SOUTH MELBOURNE.
LOCATION/ADDRESS:	REAR OF 145 MARKET STREET, REAR OF 139-143 MARKET STREET AND CROMWELL PLACE ABUTTING 139-143 MARKET STREET, SOUTH MELBOURNE.
EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION, SYSTEMS & SUPPORT
PREPARED BY:	TOULA KOTSABOUKIS, PROPERTY & VALUATIONS
FILE NO.:	34/14/674 & 34/14/673
ATTACHMENTS:	SITE PLAN & PHOTGRAPHS

1. PURPOSE

Landro Pty Ltd of 139-143 & 145 Market St, South Melbourne, has requested that Council discontinue the roads abutting and surrounded by its property holdings and to sell the land to it. In these circumstances Council is required to consider whether the roads are reasonably required as roads for public use.

It is proposed that Council undertake the procedures to ensure formal public consultation, as set out in the Local Government Act 1989, before a final decision can be made.

2. RECOMMENDATION

That the Strategy and Policy Review Committee recommend that Council resolve as follows:

That Council being of the opinion that –

- the roads abutting and at the rear of 139-143 and 145 Market Street, South Melbourne as shown on the plan attached to this report are not reasonably required as roads for public use; and
- the roads should be discontinued and the land from the roads be sold by private treaty to the abutting owner,

now directs that under Section 206 and Schedule 10 Clause 3 of the Local Government Act 1989, statutory procedures be commenced to discontinue the roads and that under Section 207A (a) and Section 223 of that Act, public notice of the proposed discontinuance be given in the Port Phillip Leader and that Council's Strategy and Policy Review Committee be appointed to hear and consider any

submissions received in response to the public notice at an appropriate time and date.

3. BACKGROUND AND CONTEXT

3.1 GENERAL

It is common for Council to consider a discontinuance and sale proposal for roads or laneways which are no longer required for access by the public or abutting property owners. By removing small public spaces the following benefits may result;

- Improved amenity – where the space becomes a haven for anti-social behaviour or is used to dump rubbish
- Improved security and safety – as access to properties is reduced
- Cost savings – as Council's maintenance responsibility is transferred with the land

In other situations it may become apparent that abutting owners are occupying the roads or have encroached into the air space. In these circumstances Council can take action to discontinue the roads and sell the land to maintain the status quo or to remove obstructions to maintain access. However, if there has been exclusive and uninterrupted use of the land in excess of 15 years, excluding a Road which is considered a Public Highway, an abutting owner may have evidence to establish rights to the land through adverse possession.

3.2 RIGHT OF WAY NO R3193 & R3195 & Cromwell Place

The proposal has been under negotiation since March 2007. Landro Pty Ltd is the owner of properties at 139-143 and 145 Market Street, South Melbourne. It also has entered into a contract of sale to purchase 3-7 Albert Street, South Melbourne.

The total area of the roads proposed for discontinuance and sale comprise approximately 158.6 square metres.

All of the roads are enclosed by gates and a fence and occupied as if they were part of the Landro Pty Ltd holdings. A building is erected over the Right of Way at the rear of 139-143 Market St, South Melbourne.

It appears that the land is not reasonably required for public use as it has not been used for this purpose for many years. The discontinuance and sale of the roads will assist by establishing order and certainty in respect to future dealings in the property at 139-143 and 145 Market Streets, South Melbourne. At the same time, there is a monetary benefit derived by the community through sale and problems associated with small public spaces can be averted.

The purchase price has been determined by the Council's Valuer in accordance with the discontinuance and sale policy. The applicants have accepted the sale price of the land of \$25,740.00, \$25,740.00 and \$262,548.00 (total \$314,028.00) plus an administration cost of \$2,500.00. Associated costs are to be borne by the applicant.

4. CONSULTATION AND STAKEHOLDERS

Council will consult with the community through a "Public Notice" inviting submissions to be published in the local newspaper in accordance with the statutory procedures.

Abutting property owners were contacted in the early stages of consultation, comments or objections were invited. It was determined at that time that the owner of 147 Market St, South Melbourne would like to retain the rear access. All abutting owners will be advised of the proposal by letter and again invited to make a submission.

Service Authorities will be consulted to ascertain any requirements for easements.

5. DISCUSSION

5.1 OPTIONS

It appears that the roads are no longer required and an unlawful property situation can be rectified and the land could be put to a more beneficial use.

If Council decides to refuse the proposal, it would be duty bound to open the roads for public access and thereby create a difficult situation due to an existing building and by creating public spaces that could lead to amenity, safety and security problems.

5.2 POLICY IMPLICATIONS

This proposal for discontinuance and sale will be undertaken accordance with the powers, functions and statutory process set out in the Local Government Act 1989.

The administrative procedures and sale negotiation are undertaken in accordance with Council policy for the discontinuance and sale of roads.

5.3 FINANCE / RESOURCE IMPLICATIONS

Council's costs are to be borne by the applicant.

Income derived from the sale will be transferred to Council's general reserves.

5.4 LEGAL & RISK IMPLICATIONS

By complying with legislation and policy and making reasonable conditions for servicing authorities, or abutting property owners, there are no legal or risk implications associated with the proposal.

If Council decides to refuse the proposal, it would be duty bound to open the roads for public access and thereby cause an impossible situation of demolishing a building or creating public spaces that could lead to amenity and safety problems.

5.5 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

Unnecessary roads can be removed and the land can be put to a more beneficial use.

ECONOMIC VIABILITY

Income derived from the sale is considered to be due compensation to the community for the loss of public land.

ENVIRONMENTAL RESPONSIBILITY

Amenity and security/safety benefits may result through avoiding the creation of small public spaces.

CULTURAL VITALITY

It is considered that the roads are not reasonably required to be used as roads for public use.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

The following is the sequence of actions if the proposal is ultimately approved.

- The applicant will be required to provide 10% deposit on the purchase price.
- A Public Notice will invite submissions from interested persons within 28 days of the date it is published.
- Comments or objections will be invited from relevant service authorities and internal departments.
- A report will be prepared for Council's Strategy and Policy Review Committee when the committee will hear and consider any submissions received. Council will make the final decision on the proposal.
- A surveyor will be engaged to prepare a title plan, consolidation plan and gazettal plan.
- A notice will be published in the Victorian Government Gazette to formally discontinue the road.
- Lawyers will be engaged to carry out conveyancing, collect the settlement costs and ensure that consolidation is completed.

The above can be accomplished within 12 months.

6.2 COMMUNICATION

Communication will be in accordance with the statutory procedures which invite submissions and ensure that each submitter will;

- Be given an opportunity to be heard in person
- Have their views considered, and
- Be told of Council's decision and the reasons for it

In addition to the statutory procedures, abutting owners will be advised of the proposal by letter and invited to participate in the decision making process.