

STRATEGY AND POLICY REVIEW COMMITTEE
3 NOVEMBER 2008 **GOVERNANCE AND COMPLIANCE**

A2	PROPOSED DISCONTINUANCE AND SALE OF A SECTION OF RIGHT OF WAY NO. R2791 (510) AT THE REAR OF 208 ALBERT ROAD, SOUTH MELBOURNE
LOCATION/ADDRESS:	REAR 208 ALBERT RD, SOUTH MELBOURNE.
EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION, SYSTEMS & SUPPORT
PREPARED BY:	DAVID GRAFFEN, COORDINATOR PROPERTY & VALUATIONS
FILE NO.:	34/14/510-01
ATTACHMENTS:	1. COPIES OF SUBMISSIONS RECEIVED 2. SITE PLAN 3. PHOTOGRAPHS

1. PURPOSE

This report concerns a proposal to discontinue and sell a section of Right of Way No. R2791 at the rear of 208 Albert Rd, South Melbourne. In accordance with the statutory procedures set out in the Local Government Act 1989 the proposal was advertised in local newspapers and submissions have been received in response.

Submissions have been made by abutting property owners in opposition to the proposal. The proposed purchaser has also requested to be heard in support of the proposal. In accordance with the statutory procedures this committee must consider all submissions and hear persons wishing to be heard in support of their submission before making a recommendation to Council.

2. RECOMMENDATION

That the Strategy and Policy Review Committee, having heard and considered submissions received in response to the proposal in accordance with the statutory procedures set out in Sections 206 and 223 and pursuant to Section 207 and clause 3 of Schedule 10 of the Local Government Act 1989, recommends that

- Submitters be given an opportunity to further address the February 2009 meeting cycle
- The February 2009 Council meeting cycle, after considering submissions received, makes the final decision on the proposal to discontinue the section of Right of Way R27291 at the rear of 208 Albert Rd, South Melbourne.

3. BACKGROUND AND CONTEXT

The subject land is a small portion of laneway between the rear of 208 Albert Road and the rear of 5 Thomson Street in South Melbourne, measuring approximately 34.3 square metres. It is bounded by concrete walls on three sides and therefore serves no function as an access way. The owner of 208 Albert Road has applied to purchase the land and intends to use it for car parking.

It has been proposed to discontinue the section of right of way and to sell the land to an abutting property owner. The owner of 208 Albert Rd, South Melbourne has accepted the sale price for the land of \$85,750.00 plus an administration cost of \$2,500.00.

The statutory process for this proposal first commenced in May 2008 with a public notice appearing in the local newspaper on the 8th July 2008.

Following the receipt of late submissions, Council resolved on 22nd September 2008, to recommence the statutory procedures to ensure that community views are expressed and considered in compliance with the procedures set out in the Local Government Act.

The proposal was re-advertised in the local newspaper on 7th October 2008. In response to the public notice two submissions have been received in opposition to the proposal. The applicant has also requested to be heard by Council in relation to this matter.

The submissions in opposition to the proposal are attached to this report and summarized in the Consultation section of this report.

On 22 September the Council appointed the Strategy & Policy Review Committee to hear submissions on this matter on 5 November 2008. Once the submissions have been heard and considered, Council is able to make a decision to finalise the matter.

There are no legislative restrictions associated with the caretaker period which would restrict the council from deciding on this matter in November 2008. However, given that this proposal is contested, and the proximity of the election, there may be reasons to delay deciding on the proposal until February 2009.

4. CONSULTATION AND STAKEHOLDERS

Internal

Council's Asset Management, Traffic Management, Strategic Planning, Planning and Building and Project Services business units were consulted and there were no objections to the proposal.

Council's Heritage Advisor has confirmed that there are no heritage issues.

External

The applicant for purchase is agreeable to the establishment of a Section 173 agreement that allows for the existence of services on adjoining buildings and maintenance of adjoining buildings by the respective property owners.

Two submissions have been received in opposition to the proposal and they summarised below;

1. Rockman and Rockman on behalf of the three owners of apartments at 5 Thomson Street (an abutting property).

The abutting owners of 5 Thomson Street object to the proposal unless the land is sold with a covenant on title preventing construction on the land and allowing for access to the land and airspace for the purpose of maintenance particularly in relation to windows, air vents and a glass balcony on the wall on the boundary of the land.

The owners of 5 Thomson Street have previously discussed the possibility of leasing or licensing the land but have considered the proposed rent or fees to be excessive.

2. Allard and Shelton on behalf of the owner of 218-220 Albert Road (an abutting property).

The abutting owner of 218-220 Albert Road objects to the proposal unless the land is sold with a covenant on title preventing construction on the land and allowing for access to the land and airspace for the purpose of maintenance particularly in relation to pipes and air vents on the wall on the boundary of the land.

Comment on objections

The covenant proposed by the objectors would grant almost unfettered access to the land by abutting property owners, to the extent that the benefit of purchase is severely diminished.

A Section 173 agreement is considered to be more practical than the use of a covenant to restrict future use and development in this circumstance because a Section 173 agreement can allow for a little more flexibility in interpretation and process for approval, but still safeguards access to neighbouring properties for maintenance purposes.

A covenant would be highly prescriptive and could inadvertently prevent a development that is of no consequence to abutting property owners.

External consultation to Service Authorities has been undertaken and no objections were received although it should be noted that easements are required for electricity and sewerage assets. It should be noted that the easements will also restrict future development opportunities.

5. DISCUSSION

5.1 OPTIONS

Option 1: Hear submissions and defer decision until February 2009

The proposal would be laid on the table for a period and the new term of council would then make the final decision.

Option 2: Hear submissions and recommend sale of the right of way

The Strategy and Policy Review Committee could, after hearing all submissions, decide to make a recommendation to approve the discontinuance and sale of the right of way to the November 2008 meeting of Council. This has previously been the officer's recommendation. In this case, appropriate wording for the decision could be:

"That the Strategy & Policy Review Committee, having considered all submissions received in response to the proposal in accordance with the statutory procedures set out in Sections 206 and 223 and pursuant to Section 207 and clause 3 of Schedule 10 of the Local Government Act 1989, recommends that Council resolve.

To complete the discontinuance of the section of Right of Way R2791 at the rear of 208 Albert Rd, South Melbourne, and to sell the land to the owners of 208 Albert Rd, South Melbourne, subject to the following;

1. That the land to be sold is consolidated with the property at 208 Albert Road
2. That easements are created on title in favour of service authorities having assets in the land, and
3. An agreement pursuant to Section 173 of the Planning and Environment Act 1987 is established with the intention of restricting the future use of the land to preserve amenity and restrict any future buildings and works on the land by location, height and size in a manner that will not prevent and will permit maintenance and repair of buildings by abutting owners of properties at 5 Thomson Street and 218-220 Albert Road, South Melbourne."

Option 3: Hear submissions and recommend the right of way is not sold

Having considered all submissions, the Strategy & Policy Review Committee may choose to recommend to the November 2008 meeting of Council that the proposal be rejected.

5.2 POLICY IMPLICATIONS

The discontinuance and sale of the section of Right of Way is in accordance with the Council's discontinuance and sale policy and the powers and procedures set out in the Local Government Act.

5.3 FINANCE / RESOURCE IMPLICATIONS

The cost of selling the section of Right of Way will be absorbed within current operational budgets.

The sale price accords with a valuation of the land.

5.4 LEGAL & RISK IMPLICATIONS

By complying with legislation and policy and making reasonable conditions for service authorities and neighbours, there are no legal or risk implications.

5.5 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

The sale of the section of right of way as proposed is seen as due compensation to the community for the loss of public land.

Small public spaces with limited visibility can be a source of private disputes over usage or can be a haven for difficult behaviour.

ECONOMIC VIABILITY

The income from the sale of the section of Right of Way is seen as due compensation to the community for the loss of public land. Sale of the land would relieve Council of a management and maintenance burden.

ENVIRONMENTAL RESPONSIBILITY

There are no sustainability implications in terms of environmental responsibility.

CULTURAL VITALITY

There are no sustainability implications in terms of cultural vitality.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

If the proposal for the discontinuance and sale was approved, a notice would be published in the Government Gazette to formally discontinue the road.

A surveyor would then prepare plans for the creation of easement, title and title consolidation.

Council lawyers would then carry out conveyancing and the establishment of an appropriate Section 173 agreement.

The above could be accomplished within six months.

6.2 COMMUNICATION

In accordance with the statutory procedures, all submitters will be notified in writing of Council's decision and the reasons for it.