

STRATEGY AND POLICY REVIEW COMMITTEE

1 JUNE 2009

GOVERNANCE AND COMPLIANCE

A15	PROPOSED DISCONTINUANCE AND SALE OF RIGHT OF WAY NO. R3993 AT THE REAR OF 27 PHILIPSON STREET, ALBERT PARK.
LOCATION/ADDRESS:	REAR 27 PHILIPSON STREET, ABLERT PARK.
EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION, SYSTEM & SUPPORT
PREPARED BY:	TOULA KOTSABOUIKIS, PROPERTY & VALUATIONS
FILE NO.:	34/14/3993
ATTACHMENTS:	SITE PLAN & PHOTOGRAPH

1. EXECUTIVE SUMMARY

The owners of 27 Philipson Street, Albert Park, have requested that Council discontinue the road at the rear of their property and sell the land to them. In these circumstances Council is required to consider whether the road is reasonably required as a road for public use.

On the 23 February 2009 Council resolved to commence statutory procedures to discontinue the road and sell the land to the abutting owners. Subsequently, a notice inviting submissions was published in the Port Phillip Leader. No submission was received.

Council can now make a decision to complete the procedures and finalise the matter. It is recommended that the road be discontinued and sold as proposed.

2. RECOMMENDATION

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

- 2.1 Form the opinion that the road at the rear of 27 Philipson Street, Albert Park as shown on the plan attached to this report is not reasonably required as a road for public use.
- 2.2 Discontinue the road;
- 2.3 Direct that a notice be published in the Government Gazette.
- 2.4 Direct that the land from the road be sold to the abutting owner of 27 Philipson Street, Albert Park.

- 2.5 Direct that the discontinuance and sale will not affect any right power or interest held by service authorities in connection with assets under the control of the authority in or near the road.
- 2.6 Authorise the use of the Common Seal of the Port Phillip City Council to be affixed to the Transfer of Land.

3. DISCUSSION

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 road or have encroached into the air space. In these circumstances Council can take action to either, discontinue the road 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, an abutting owner may have evidence to establish rights to the land through adverse possession unless the road is considered to be a “public highway”.

RIGHT OF WAY NO R3993

Council considered this matter on 23 February, 2009 when it resolved to commence the statutory procedures which invoke a mandatory public consultation process. Since that time the proposal has been advertised and no submission was received in response.

The owners of 27 Philipson Street, Albert Park wish to purchase right of way no. R3993 situated at the rear of their property. The road (right of way) comprises approximately 15.7 sq m. The road is enclosed by a high fence and is occupied as if it was part of the property at 27 Philipson Street.

There are special circumstances which apply to this proposal. The land has not been proclaimed a “Public Highway” nor has it been constructed by Council. While the original subdivision plan indicates an intent that the land be set aside as a road, there is no notation as such. The applicant can make application to the Land Registry to vest the land in their name. However, the road appears on Council’s register of public roads and therefore adverse possession could be disputed. In short the status of the road is not clear.

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 road will assist by establishing order and certainty in respect to future dealings in the property at 27 Philipson Street. At the same time, there is a monetary benefit derived by the

community through sale and problems associated with a small public open space can be averted.

The purchase price has been negotiated with the applicant. The price reflects the special circumstances that apply in this particular case. Associated costs are to be borne by the applicant. The applicants have accepted the sale price of the land of \$15,700.00 plus an administration cost of \$2,500.00.

CONSULTATION AND STAKEHOLDERS

There has formal public consultation through the statutory procedures set out in Section 223 of the Local Government Act.

A public notice advising of the proposal and inviting submissions was published in the Port Phillip Leader newspaper on the 24th March 2009. No submission has been received in response to the advertisement.

The proposal has been referred internally. No objections were received from the relevant Council departments.

Service Authorities have been consulted. While there is no objection to the proposal, service assets (sewer) is in the location of the land and therefore an easement may be required.

OPTIONS

An unnecessary road may be removed by Council using its powers for road discontinuance and sale for the benefit of adjoining property owners and the community at large.

If Council decides to refuse the proposal, it would be duty bound to open the road for public access and thereby create a small public space that could lead to amenity and safety problems. It should be noted that the road has been enclosed for a long period of time. The applicant may then choose to lodge an adverse possession claim with Land Registry.

LEGISLATIVE AND POLICY IMPLICATIONS

The proposal for the discontinuance and sale of the section of road has been undertaken in accordance with the Council powers and functions and the statutory procedures 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 but the special circumstances in this case are reflected in the proposed sale price.

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.

LEGAL & RISK IMPLICATIONS

By complying with legislation and policy and making reasonable conditions for servicing authorities, 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 road for public access and thereby create a small public space that could lead to amenity and safety problems. There is also risk that the applicant could make an application to the Land Registry for adverse possession at which point Council would need to consider whether or not to contest the claim.

TIMELINES

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

- If approved, a surveyor will prepare plans for the creation of easements, title plan, consolidation plan and gazettal plan.
- A notice will be published in the 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 4 months.