

STRATEGY AND POLICY REVIEW COMMITTEE
2 FEBRUARY 2009 **GOVERNANCE AND COMPLIANCE**

A4	PROPOSED DISCONTINUANCE AND SALE OF RIGHT OF WAY NO. R2421 AT THE REAR OF 132 & 134 HEATH ST, PORT MELBOURNE.
LOCATION/ADDRESS:	REAR 132 & 134 HEATH ST, PORT MELBOURNE.
EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION, SYSTEMS & SUPPORT
PREPARED BY:	TOULA KOTSABOUIKIS, PROPERTY & VALUATIONS
FILE NO.:	2540/134-01 & 2540/132-01
ATTACHMENTS:	SITE PLAN & PHOTOGRAPHS SUBMISSION

1. PURPOSE

The owner of 134 Heath St, Port Melbourne, has requested that Council discontinue the road at the rear of 132 & 134 Heath St, Port Melbourne, and sell the land to her. In these circumstances, Council is required to consider whether the road is reasonably required as a road for public use.

The procedures for formal public consultation as set out in the Local Government Act 1989 have been initiated. As a result of a public notice, one submission has been received. Council can now consider the submission and hear any supporting material before making a decision complete the procedures and finalise the matter.

2. RECOMMENDATION

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

That Council being of the opinion that the road at the rear of 132 & 134 Heath St, Port Melbourne as shown on the plan attached to this report is not reasonably required as a road for public use -

- discontinues the road;
- directs that a notice be published in the Government Gazette;
- directs that the land from the road be sold to the abutting owner of 134 Heath St, Port Melbourne;
- directs 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;

- authorises the use of the Common Seal of the Port Phillip City Council to be affixed to the Transfer of Land.

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 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".

3.2 RIGHT OF WAY NO R2421

An application has been received from the owner of 134 Heath St, Port Melbourne to purchase the road (Right of Way No. R2421) at the rear of 132 & 134 Heath St, Port Melbourne. The road comprises approximately 9 square metres approximately.

The road is occupied as if it was part of the property at 134 Heath St. A gate is located at the entrance behind 132 Heath St and the area is tiled. Another gate is located on the boundary of 132 & 134 Heath St further preventing public access.

The road was created on title as a result of a subdivision in 1956 creating the properties at 132 – 136 Heath Street. It appears that the road was created for "night cart" purposes and that it was not intended to benefit other property owners eg 405 Bay Street.

Council Officers have communicated with previous owners of 132 & 134 Heath St, Port Melbourne and it has been confirmed that the road has been enclosed and occupied since at least 1985.

It is not viable to assert that the road is a "public highway" as it has not been constructed by Council, it does not appear on Council's road register and there is a lack of other evidence.

In accordance with the procedures set out in the Local Government Act 1989, a notice was published in the Caulfield/Port Phillip Leader newspaper on 7th October 2008. The notice invites submissions from interested persons. Rennick & Gaynor Solicitors on behalf of the owner of 405 Bay St, Port Melbourne (an abutting property) objects to the proposal on the grounds that the road will be required for access to a

proposed shop. The shop is shown on a plan which is subject to a VCAT appeal for planning permit after an application was refused on 17th June 2008.

It is considered that the land is not reasonably required for public use as it has not provided access for at least 23 years. The discontinuance and sale of the road provides a monetary benefit derived by the community through sale and problems associated with title and access rights can be averted.

The purchase price has been determined in accordance with the discontinuance and sale policy. The applicant has accepted the sale price (\$10,000 plus an administration cost of \$2,500). Associated costs are to be borne by the applicant.

4. CONSULTATION AND STAKEHOLDERS

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

Abutting property owners were notified of the proposal by letter on the 18th September 2008. A public notice advising of the proposal was published in the Port Phillip Leader newspaper on the 7th October 2008. In response to the mandatory consultation, one submission was received.

Rennick & Gaynor Solicitors on behalf of the owner of 405 Bay St, Port Melbourne (an abutting property) objects to the proposal on the grounds that the road will be required for access to a proposed shop.

The submitter has been invited to be heard by the Strategy and Policy Review Committee.

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) are located within the land and therefore an easement is required.

5. DISCUSSION

5.1 OPTIONS

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

If Council decides to refuse the proposal, 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.

5.2 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 negotiations were 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 service authorities, there are no legal or risk implications.

5.5 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

Council can use its powers for road discontinuance and sale for the benefit of the parties and the community at large.

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 associated with the land being closed to the public will be retained by the owners of the properties at 132-136 Heath Street, Port Melbourne

CULTURAL VITALITY

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

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

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.

6.2 COMMUNICATION

In accordance with the statutory procedures, the submitter will be advised of Council's decision and the reason for it.