

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

A4	PROPOSED DISCONTINUANCE AND SALE OF A SECTION OF RIGHT OF WAY NO.R3197 (205) REAR 133 MARKET STREET, SOUTH MELBOURNE
LOCATION/ADDRESS:	REAR 133 MARKET STREET, SOUTH MELBOURNE
EXECUTIVE DIRECTOR:	CATHY HENDERSON, ACTING EXECUTIVE DIRECTOR, ORGANISATION SYSTEMS & SUPPORT
PREPARED BY:	TOULA KOTSABOUKIS, PROPERTY ADVISOR, PROPERTY & VALUATIONS
FILE NO.:	34/14/205-01, 3685/129-01
ATTACHMENTS:	SITE PLAN & PHOTOGRAPH

1. PURPOSE

The owner of 129 Market Street, South Melbourne, has requested that Council discontinue the road at the rear of 133 Market Street and sell the land to him. 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 public notice one submission has been received. Council can now consider the submission and make a decision to complete the procedures and finalise the matter.

2. RECOMMENDATION

- 2.1 That the Strategy and Policy Review Committee recommend that Council resolve as follows:
- 2.2 That Council being of the opinion that the road at the rear of 133 Market Street, South 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 129 Market Street, South 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;

- directs that an easement for light and air be created in favour of the owner of the abutting property at 133 Market Street, South Melbourne, and
- 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 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.

3.2 RIGHT OF WAY NO 3197

An application has been received from the owner of 129 Market Street, South Melbourne to purchase the road (Right of Way No. R3197) at the rear of 133 Market Street, South Melbourne. The road comprises approximately 24 square metres.

The road was occupied as if it was part of the property at 129 Market Street. A cyclone fence preventing public access was removed in 2007 as a result of Council enforcement action.

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 23 September 2008. The notice invites submissions from interested persons. In response, one submission was received from Lemon Baxter acting on behalf of the owner of 133 Market Street. The submitter has not requested to be heard in person in support of the submission.

In the submission it is reported that the owner of 133 Market Street does not object to the proposed discontinuance and sale provided that the new owner is not permitted to build on the land. There are windows on the wall of the 133 Market Street property which forms the boundary with the subject road and the owner is concerned about the loss of air and light. An easement can be created to meet this condition to the satisfaction of all parties.

It is considered that the land is not reasonably required for public use as it only provides access for the two properties - 129 and 133 Market Street. The

discontinuance and sale of the road provides 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 determined by Council's valuer in accordance with the discontinuance and sale policy. The applicant has accepted the sale price (\$46,000 plus an administration cost of \$2,500). Associated costs are to be borne by the applicant.

4. CONSULTATION AND STAKEHOLDERS

There has been formal public consultation through the statutory procedures. The applicant and the submitter are the only property owners affected by the proposal and both are agreeable to it being approved.

The following departments of Council have been asked to comment on the proposal; Asset Management, Traffic Management, Strategic Planning, Planning and Building and Project Services. There is no internal opposition to the proposal.

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

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 would be duty bound to keep the road open for public access and thereby create a small public space that could lead to amenity and safety problems.

5.2 POLICY IMPLICATIONS

This proposal for the discontinuance and sale of the section of Right of Way has been undertaken in accordance with the powers, functions and statutory process 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

An easement will be created for light and air in favour of the owner of 133 Market Street, South Melbourne, to restrict development of the land, once it is consolidated to the title of 129 Market St. South Melbourne.

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

5.6 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 may result through removal of a small public space.

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.