

**ORDINARY MEETING OF COUNCIL
18 DECEMBER 2008**

ORDER OF THE DAY

ORDER 1	PROPOSED DISCONTINUANCE AND SALE OF A SECTION OF RIGHT OF WAY NO.R2791 (510) AT THE REAR OF 208 ALBERT RD, SOUTH MELBOURNE
LOCATION/ADDRESS:	REAR 208 ALBERT RD, SOUTH MELBOURNE
EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION, SYSTEMS & SUPPORT
PREPARED BY:	TOULA KOTSABOUKIS, PROPERTY & VALUATIONS
FILE NO.:	34/14/510-01 & 34/14/2791
ATTACHMENTS:	SITE PLAN, PHOTOGRAPHS & SUBMISSIONS

1. PURPOSE

The owner of 208 Albert Road, South Melbourne, has applied to acquire a section of Right of Way at the rear of the property. This report recommends that the application be approved and that the section of Right of Way No. R2791 be discontinued and sold.

The matter was reported to Council in the November 2008 cycle of meetings when it was resolved that it be deferred for the consideration of the newly elected Council.

In accordance with the resolution and the procedures set out in Section 223 of the Local Government Act 1989, the applicant and those who have made a submission, have been invited to address the Council.

When the submitters have been heard and Council has considered all material presented in the submissions, a decision can be made to finalise the matter.

2. RECOMMENDATION

That Council, 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 Clause 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, South Melbourne.

2. Easements are created in favour of Council or 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.

3. BACKGROUND AND CONTEXT

Council has generally supported the sale of redundant laneways. Council receives proposals and responds in accordance with the Discontinuance and Sale of Roads Policy. Guidelines for the Council policy on this topic, state that discontinuance and sale can be supported for the following reasons;

- Amenity benefits – particularly where there is evidence of problems with syringes being deposited in the right of way.
- Health benefits – particularly where the right of way is used to dump rubbish or where litter collects.
- Security benefits – the discontinuance of the right of way improves security as access to a property is reduced.
- Council benefits – cost savings for the Council as the Council is no longer responsible for maintaining the right of way.

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. It should be noted that the section of Right of Way is currently being used as a prohibited parking space. The owner of 208 Albert Road has applied to purchase the land and intends to use it for approved car parking.

It is therefore 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. No submissions were received by the due date.

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 were received in opposition to the proposal. The applicant and submitters were heard by the Strategy and Policy Review Committee on 5 November, 2008 and have been invited to address Council again.

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

Following the consideration of submissions Council may make a decision to finalise the matter.

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. Council officers have met with submitters to discuss these issues.

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 themselves 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

A Section 173 agreement, while similar to a covenant, is considered to be more practical to restrict future use and development in this circumstance. This is because a Section 173 agreement can allow for more flexibility in interpretation and process for approval. A covenant must be highly prescriptive and could inadvertently prevent a development that is of no consequence to abutting property owners. The section 173 agreement would also enable access by others for maintenance.

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

External consultation with 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 also be noted that the easements will also restrict future development opportunities.

The purpose of a Right of Way is for carriageway access to abutting properties. As both abutting buildings are constructed without doors to the title boundary, the section of Right of Way is not longer required for carriageway purposes and is considered redundant.

The pipe located on the building at 218-220 Albert Road, South Melbourne, protrudes and encroaches into the air space of the Right of Way.

5. DISCUSSION

5.1 OPTIONS

Having considered all submissions Council may approve or reject the proposal.

5.2 POLICY IMPLICATIONS

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

It is considered that the section of Right of Way is not reasonably required for public use as it does not serve carriageway purposes and is therefore redundant.

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 for the land is \$85,750.00 plus an administration cost of \$2,500.00. The sale price has been established by a valuation of the land.

The income from the sale of the land will be transferred into Council's general reserves in accordance with current Council policy. The funds may then be expended on an approved priority project or Council initiative.

5.4 LEGAL & RISK IMPLICATIONS

By complying with legislation and policy and making reasonable conditions for service authorities and neighbours, legal or risk implications are minimised.

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 a haven for anti-social behaviour.

The land is currently used as a car space but has been used in the past as a place to keep rubbish.

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 minor management and maintenance burden.

ENVIRONMENTAL RESPONSIBILITY

It is proposed to sell the land with the encumbrance of a Section 173 agreement to maintain local amenity.

CULTURAL VITALITY

There are no sustainability implications in terms of cultural vitality.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

- If approved, a surveyor will then prepare plans for the creation of easements, title, consolidation and gazettal.
- A notice will be published in the Government Gazette to formally discontinue the road.
- Council lawyers will then carry out conveyancing and the establishment of an appropriate Section 173 agreement.

- The above can be accomplished within 6 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.