



**ORDINARY
MEETING OF
COUNCIL**

AGENDA

23 JUNE 2008

Ordinary Meeting of Council

Welcome

Welcome to this Meeting of the Port Phillip City Council.

Council Meetings are an important way to ensure that your democratically elected representatives are working for you in a fair and transparent way. They also allow the public to be involved in the decision making process of Council.

About this meeting

There are a few things to know about tonight's meeting. The first page of tonight's Agenda itemises all the different parts to the meeting. Some of the items are administrative and are required by law. In the agenda you will also find a list of all the items to be discussed this evening.

The agenda may include new items that have not previously been considered before at a Committee Meeting, these items are known as Orders of the Day. The agenda may also include supplementary reports which provide additional information requested by Council. Recommendations from Council's Strategy and Policy Review Committee and at times the Statutory Planning Committee (which both have met during the month) will also be presented.

Each Order of the Day and supplementary information will have reports written by a Council officer outlining the purpose of the report, all relevant information and a recommendation. Council will consider the report and either accept the recommendation or make amendments to it. All decisions of Council are adopted if they receive a majority vote from the Councillors present at the meeting.

Public Question Time

Provision is made at the beginning of the meeting for question time from members of the public. Question time is limited to 20 minutes unless the meeting resolves to extend this time.

If you would like to ask a question tonight, please fill in the 'Do You Wish to ask a Question' form located outside the chamber and give it to the Administrative Officer.

Public Comment

Any person who has made a written submission on an item and requested that she or he be heard in support of that written submission pursuant to section 223 of the Local Government Act will be entitled to address Council. Any other public comment at this meeting is at the discretion of the Chairperson.

If you would like to address the Council on any of the items being discussed tonight, please fill in the blue 'Do you wish to make a Public Comment' form located outside the Chamber and give to the Administrative Officer.

When your item is being discussed the Chairperson will call your name and ask you to address the Council. You will have 3 minutes to speak. If somebody has already raised an issue you agree with, there is no need to repeat it.



CITY OF PORT PHILLIP

PORT PHILLIP CITY COUNCIL BUSINESS PAPER

To Councillors

Notice is hereby given that an **Ordinary Meeting** of the **Port Phillip City Council** will be held in the **Council Chamber, St Kilda Town Hall** on **Monday, 23 June, 2008 at 6.00pm.**

AGENDA

1. **APOLOGIES**
2. **CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**
 - Minutes of the Ordinary Meeting of the Port Phillip City Council held on 26 May 2008.
 - Minutes of the Special Meeting of the Port Phillip City Council held on 26 May 2008.
 - Minutes of the Special Meeting of the Port Phillip City Council held on 16 June 2008.
 - Minutes of the Statutory Planning Committee Meeting of the Port Phillip City Council held on 10 June 2008 for noting by Council (previously circulated to Councillors).
3. **PETITIONS AND JOINT LETTERS**
4. **SEALING SCHEDULE**
5. **CORRESPONDENCE**
6. **PUBLIC QUESTION TIME**
7. **COUNCILLOR QUESTION TIME**
8. **PRESENTATION OF REPORTS AND RECOMMENDATIONS FROM S86 SPECIAL COMMITTEE MEETINGS**
 - Reports of the Strategy and Policy Review Committee - 2 June 2008.
 - Reports of the Statutory Planning Committee - 10 June 2008.
9. **CHIEF EXECUTIVE OFFICER'S REPORT**
10. **ORDERS OF THE DAY**
11. **REPORTS BY COUNCILLOR DELEGATES APPOINTED TO OTHER BODIES**
12. **URGENT BUSINESS**
13. **CONFIDENTIAL MATTERS**

Including reports considered at the Strategy and Policy Review Committee and the Statutory Planning Committee.

David Spokes
Chief Executive Officer
18 JUNE 2008

3. PETITIONS AND JOINT LETTERS

4. SEALING SCHEDULE

The following documents are submitted for signature and sealing:

SECTION 163 AGREEMENT between PORT PHILLIP CITY COUNCIL and JOHNSTON SONI PTY LTD, regarding 462 St Kilda Road, Melbourne, to endorse the determination of the Building Appeals Board similar to recent application relating to 46 Boundary Road, South Melbourne.

Item not previously considered by Council.

Responsible Manager: George Borg, City Development

RECOMMENDATION

That the Common Seal of the Port Phillip City Council be affixed to the above documents.

5. CORRESPONDENCE

Item 1

A copy of the Confidential List of Registered Correspondence for the Mayor and Councillors between the month of 18 May 2008 and 17 June 2008 is attached for information.

6. PUBLIC QUESTION TIME

7. COUNCILLOR QUESTION TIME

8. PRESENTATION OF REPORTS AND RECOMMENDATIONS FROM S86 SPECIAL COMMITTEE MEETINGS

8(A) REPORTS OF THE STRATEGY AND POLICY REVIEW COMMITTEE HELD AT THE ST KILDA TOWN HALL ON 2 JUNE 2008

A1 DISABILITY ACTION PLAN

Purpose

To inform Council and seek endorsement of the new Disability Action Plan 2008-2012 and to highlight actions from the previous 5 years' plan.

COMMITTEE'S RECOMMENDATION

That Council having considered the recommendation of the Strategy and Policy Review Committee resolve to:

1. Endorse the Disability Action Plan 2008 -2012 as a commitment to improving access for people with disabilities and their carers to services, information and to the built environment.
2. Lodge the Disability Action Plan 2008 -2012 with the Human Rights and Equal Opportunity Commission (HREOC).
3. Nominates the Disability Action Group to monitor the action plan and report back to Council annually on achievements for that previous year.
4. Notes the progress made on actions listed in the existing Disability Action Plan 2003 – 2008.

**A2 BETTY DAY COMMUNITY CENTRE REDEVELOPMENT
(See Confidential Supplementary Report)**

Purpose

To inform Council on the status of the Betty Day Community Centre redevelopment project, and the tender process to select a preferred builder

COMMITTEE'S RECOMMENDATION

That Council having considered the recommendation of the Strategy and Policy Review Committee resolve:

1. That the Council receives the report and notes the progress made on the redevelopment of the Betty Day Community Centre.
2. That a confidential supplementary report outlining the tender evaluation assessment and process and recommendation of a preferred contractor will be presented to the Ordinary Council Meeting on 26 June 2008.

A3 DOMESTIC ANIMAL MANAGEMENT PLAN AND OFF LEASH REVIEW

Purpose

To update Council on the Draft Domestic Animal Management Plan.

COMMITTEE'S RECOMMENDATION

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

1. Adopt the draft domestic animal management plan and release it for public comment;
2. Consider the results of any feedback as a result of the consultation process during the September cycle of Council meetings

A4 REDEVELOPMENT OF BOB JANE STADIUM

Purpose

To outline the outcomes that Council wishes to see from the redevelopment that underpin Council's in-principle support for redevelopment of Bob Jane Stadium.

COMMITTEE'S RECOMMENDATION

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

1. That the Council resolve to support 'in-principle' the redevelopment of Bob Jane Stadium based on the following assumptions that the redevelopment will:
 - Enhance the partnership between South Melbourne 'Mens' and 'Womens' Soccer Club by incorporating appropriate arrangements for the use of Bob Jane Stadium by both clubs and provide for a more 'purpose built' facility to secure the long-term future of South Melbourne Women's Soccer Club within Albert Park Reserve.
 - Maximise local access and active local use of the facility, including providing a venue for a local little athletics club.
 - Achieve the principles of the Port Phillip Open Space Strategy 2006, in regard to offsetting any impact of loss of open space by gaining a better space within the precinct and demonstrating a clear net community benefit.
 - Include the viable restoration and a compatible use of the heritage grandstand.
 - Apply Environmental Sustainability Design standards that minimize energy use and maximize water retention and re-use.
 - Be considered as part of an integrated planning approach led by the State Government, that would include consideration of MSAC, Bob Jane car park and stadium as one precinct.
 - Provide for CoPP to be represented at a senior level on any steering / working party;
 - Not require any financial commitment from Council in the context of Bob Jane Stadium being a non council owned asset.
2. That the Mayor write to the minister for sport and recreation requesting a meeting to discuss Council's policy position on this matter and seek assurances that the redevelopment of Bob Jane Stadium will achieve the assumptions that underpin Council's 'in-principle' support.

A5 CULTURAL DEVELOPMENT FUND 2008/09: RECOMMENDATION OF SUCCESSFUL APPLICANTS

Purpose

This report provides the list of the successful 2008/9 Cultural Development Fund projects as recommended by the Cultural Development Fund Committee. The projects are listed in an attachment which remains confidential until unsuccessful applicants have been informed.

COMMITTEE'S RECOMMENDATION

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

1. Endorse the recommendations of the Cultural Development Fund Committee for 2008/9 and provide funding for the successful applicants as detailed in Attachment1;
2. That in response to issues identified by the Cultural Development Fund Committee, Council directs officers to consider options for increasing funding to the Cultural Development Fund as part of the development of the 'Creative Futures Strategy' to be considered by Council in July 2008;
3. Thank the members of the Cultural Development Fund Committee for their voluntary work and consider the suggestions made by the Committee for the future.

A6 LIFESAVING CLUB STRATEGY UPDATE

Purpose

This report provides Council with an update on the implementation of the Lifesaving Club Strategy.

COMMITTEE'S RECOMMENDATION

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

1. That the Council notes the report providing an update on the implementation of the *Lifesaving Club Strategy 2003* and requests officers to continue with the implementation of the remainder of the strategy
2. In relation to the South Port Lifesaving Club feasibility Study, Council resolve that;
 - the option of one clubhouse to service the South Melbourne / Port Melbourne Beach areas be further investigated as the preferred option;
 - \$150K be committed in the 2008/2009 budget to undertake further detailed investigation of this option, development of a funding strategy that investigates funding from key stakeholders / agencies and a cost and community benefit analysis;
 - further detailed design of the 'one clubhouse' option be undertaken in a manner consistent with the principles of Council's Life Saving Club Strategy, Community Hubs Policy, City of Port Phillip Financial Principles and the Life Saving Victoria Future Clubhouse Guidelines;
 - any further detailed investigation requires consideration of a LSV 'summer weekend' service to be provided from the newly renourished Middle Park Beach.
3. In relation to the St Kilda Life Saving Club, Council resolve that;
 - an investigation be undertaken into options for housing of the St Kilda Life Saving Club in a manner consistent with the principles of Council's Life Saving Club Strategy, St Kilda Urban Design Framework, Community Hubs Policy, City of Port Phillip Financial Principles and the Life Saving Victoria Future Clubhouse Guidelines;
 - \$30K be committed in the 2008/2009 budget to undertake this investigation of options, including development of a funding strategy that investigates funding from key stakeholders / agencies and a cost and community benefit analysis.
4. In relation to the Sandridge Lifesaving Club, Council resolve that it will work with the Club to undertake more detailed planning for the facility in accordance with the *Lifesaving Club Strategy 2003*.

A7 FRIENDS OF SUAI REVIEW 2004-07

Purpose

To consider a review of the Friends of Suai program commissioned by the Friends of Suai Community Steering Group.

COMMITTEE'S RECOMMENDATION

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

1. Note the findings and recommendations in the FoS Review.
2. Note the significant progress to date of the COPP and Suai Friendship Agreement and extends its friendship and respect to the staff and committee of the Suai Community Centre.
3. Extend its appreciation for the work of the Friends of Suai, Community Steering Group and in particular the considerable work undertaken for the Review which highlights how the resources from the CoPP and the relationship with Suai have made a significant contribution to building capacity in Suai.
4. Endorse the need to strengthen CoPP and Suai joint planning processes to promote a greater exchange of ideas and mutual understanding.
5. Recommend to the 2008 -2012 incoming Council that the Friends of Suai program be extended beyond the Friendship Agreement of 2010, including continuing financial and administrative support for the program.
6. Recommends to the incoming Port Phillip Council the hosting of a significant community event to celebrate the 10-year anniversary of the FoS partnership through the invitation of key Timor dignitaries to the COPP.

**A8 2008/2009 ANNUAL REPORT OF THE COMMUNITY GRANTS ASSESSMENT
PANEL AND PROGRAM RECOMMENDATIONS**

Purpose

This reports presents the 2008 Annual Report of the Community Grants Program Assessment Panel and seeks Council's endorsement of the recommendations of the 2008/09 Community Grants Program.

COMMITTEE'S RECOMMENDATION

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

1. To endorse the recommendations made by the Community Grants assessment panel to fund 87 of the 113 applications, to a total of \$232,106 from the 2008/09 budget as outlined in Confidential Attachment 2 - 2008/09 Assessment panel recommendations for funding.
2. That the details of funded programs be made public once all applicants have been advised of the outcome of their grant applications.
3. Formally thanks Community Grants Assessment Panel community representatives Bruce Thorn, Russell White, Sally Cunningham and Jan Robins for their contribution in the first year of their two year term.

A9 IMPLEMENTATION OF COMMUNITY PLAN – PROGRESS REPORT

Purpose

Report discussing first year of implementation of the 2007-2017 Community Plan and progress to date.

COMMITTEE'S RECOMMENDATION

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

1. Note the significant progress to date in implementing the Community Plan since its launch in November 2007.
2. Note the intention to host a forum for stakeholders in September 2008 for the purpose of discussing and reporting progress on implementation of the Community Plan.

- A10 PROPOSED TRANSFER OF 121 LIARDET STREET, PORT MELBOURNE TO PORT PHILLIP HOUSING ASSOCIATION, SALE OF 1 & 2 / 144 NOTT STREET, PORT MELBOURNE AND SALE OF 2 / 63 CARLISLE STREET ST KILDA
(See Supplementary Report)**

Purpose

Council has commenced the statutory processes under the Local Government Act for the sale of land and road discontinuance. Council should now consider all submissions received; the recommendation is to defer decision pending the statutory planning process.

COMMITTEE'S RECOMMENDATION

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

1. That having commenced the statutory procedures for the sale of land and road discontinuance in respect of land at 121 Liardet Street and Kyme Place, Port Melbourne, 144 Nott Street, Port Melbourne, and 2/63 Carlisle Street, St Kilda, in accordance with the requirements of the Local Government Act and having received and considered submissions and heard from persons speaking in support of their submissions, to defer its decision.
2. To advise all persons who made a submission and the local community of its decision and the reasons for it.
3. To encourage the Port Phillip Housing Association to engage with the local community to explain its programs and plans and devise a revised plan for the proposed community housing project before making an application for a statutory planning permit.
4. To consider a supplementary report from officers on 23 June 2008 setting out a proposal to appoint a committee under section 86 of the Local Government Act to decide on any planning application made by Port Phillip Housing Association in respect of the Kyme Place car park in Port Melbourne, with the membership to include appropriate councillor and community representation and planning expertise.

**A11 RESPONSE TO COUNCILLOR QUESTION REGARDING RECENT WORKS IN
MALAKOFF AND SEBASTOPOL STREETS, EAST ST KILDA**

Purpose

To respond to Cr Ray's question in regard to recent road resurfacing works in Malakoff and Sebastopol Streets, East St Kilda and advise of any further proposed rectification works.

COMMITTEE'S RECOMMENDATION

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

1. To receive and note the report regarding recent works in Malakoff and Sebastopol Streets, East St Kilda, subsequent rectification works, resident consultation, future site monitoring and rectification works if required.

A12 NAMING OF RESERVE BOUNDED BY CNRS VICTORIA AVENUE, O'GRADY & MOUBRAY STREETS, ALBERT PARK

Purpose

The purpose of this report is to consider a proposal and commence statutory procedures to name a reserve on the corner of Victoria Avenue, O'Grady & Moubray Streets, Albert Park 'Rats of Tobruk Reserve'.

COMMITTEE'S RECOMMENDATION

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

1. Authorise the commencement of the statutory procedures required, in accordance with the Geographic Names Act 1998, to name a reserve on the corner of Victoria Avenue, O'Grady & Moubray Streets, Albert Park 'Rats of Tobruk Reserve'.

A13 PROPOSED DISCONTINUANCE AND SALE OF A SECTION OF RIGHT OF WAY NO. R1229 REAR 3 LITTLE FINLAY ST, ALBERT PARK

Purpose

This report is to finalise the discontinuance and sale of section of Right of Way No. R1229 rear 3 Little Finlay St, Albert Park.

COMMITTEES RECOMMENDATION

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

1. That the statutory procedures to discontinue the section of Right of Way at the rear of 3 Lt Finlay St, Albert Park, be completed. That the land from the Road be sold to the owners of 3 Lt Finlay St, Albert Park, subject to the land being consolidated to the property.

**A14 PROPOSED SALE OF A SECTION OF A PREVIOUSLY DISCONTINUED
RIGHT OF WAY AT THE REAR OF 7 RAINSFORD ST, ELWOOD**

Purpose

This report is to finalise the transfer of a section of previously discontinued Right of Way at the rear of 7 Rainsford St, Elwood.

COMMITTEES RECOMMENDATION

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

1. That the statutory procedures be completed. That the land be sold to the owners of 7 Rainsford St, Elwood, subject to the land being consolidated to the property.

- A15 PROPOSED DISCONTINUANCE AND SALE OF A SECTION OF RIGHT OF WAY NO. R2419 ABUTTING AND REAR 124 HEATH ST, PORT MELBOURNE
(See Supplementary Report)**

Purpose

This report is to finalise the discontinuance and sale of a section of Right of Way No.R2419 abutting and rear 124 Heath St, Port Melbourne.

COMMITTEE'S RECOMMENDATION

That this item be deferred to the Ordinary Meeting of Council to be held on Monday, 23 June 2008.

**A16 PROPOSED LEASE AGREEMENT TO MELBOURNE WATER CORPORATION – USE OF FENNELLS RESERVE, MELBOURNE MAIN SEWER REPLACEMENT PROJECT
(See Supplementary Report)**

Purpose

To grant a lease under Section 17D of the Crown Land (Reserves) Act 1978 to Melbourne Water Corporation for use of Fennell Reserve.

COMMITTEE’S RECOMMENDATION

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

1. to commence the statutory procedures under Section 190 of the Local Government Act 1989 (the “Act”) and publish a notice in local newspapers inviting interested persons to make a submission under Section 223 of the Act for the proposed lease of the land described as Fennell Reserve to Melbourne Water Corporation.
2. to appoint its Strategy and Policy Review Committee to hear and consider any submissions made under Section 223 of the Act at its meeting to be held on 4 August 2008.

8(B) REPORTS OF THE STATUTORY PLANNING COMMITTEE HELD AT THE ST KILDA TOWN HALL ON 10 JUNE 2008.

Note: Business items B1, B2, and B3 were resolved by the Statutory Planning Committee held on 10 June 2008 in accordance with Section 86 of the Local Government Act 1989.

B4 DELEGATE REPORT MAY 2008

Purpose

This report presents Council with a summary of all Planning Permits issued in accordance with the Schedule of Delegation made under Section 98 of the Local Government Act 1989 and Section 188 of the Planning & Environment Act 1987.

COMMITTEE'S RECOMMENDATION

That the Council receive and note the report regarding the summary of all Planning Decisions issued in accordance with the Schedule of Delegation made under Section 98 of the Local Government Act 1989 and Section 188 of the Planning & Environment Act 1987 adopted by Council on 24 July 1996 and as amended, for the Port Phillip Planning Scheme.

9. CHIEF EXECUTIVE OFFICER'S REPORT

10. ORDERS OF THE DAY

**11. REPORTS BY COUNCILLOR DELEGATES APPOINTED TO
OTHER BODIES**

12. URGENT BUSINESS

13. CONFIDENTIAL MATTERS

A2 BETTY DAY COMMUNITY CENTRE REDEVELOPMENT (CONFIDENTIAL)
(See Confidential Supplementary Report)

(Note: Item classified as confidential item in accordance with Section 89 2 (d) of the Local Government Act 1989)

**ORDINARY MEETING OF COUNCIL SECTION
23 JUNE 2008**

SUPPLEMENTARY

A10	PROPOSED TRANSFER OF 121 LIARDET STREET, PORT MELBOURNE TO PORT PHILLIP HOUSING ASSOCIATION; SALE OF 1 & 2/144 NOTT ST, PORT MELBOURNE; SALE OF 2/63 CARLISLE STREET ST KILDA
LOCATION/ADDRESS:	121 LIARDET STREET, PORT MELBOURNE 144 NOTT STREET, PORT MELBOURNE 2 / 63 CARLISLE STREET, ST KILDA
RESPONSIBLE EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR ORGANISATION SYSTEMS & SUPPORT
AUTHOR:	CATHY HENDERSON, MANAGER GOVERNANCE & COMMUNITY RELATIONS
FILE NO.:	3120/003-03
ATTACHMENTS:	1. PROPOSED TERMS OF REFERENCE 2. PROPOSED INSTRUMENT OF DELEGATION

1. EXECUTIVE SUMMARY

The Kyme Place affordable housing project is a proposal to build over a council car park in Port Melbourne. The proposal is for an affordable housing facility, which would retain public car parking on the ground level. Consultation processes around transfer of land were commenced, and there were local concerns raised about statutory planning issues such as parking and access. The Strategy & Policy Review Committee recommended on 2 June that the transfer of land process be deferred, and that the statutory planning processes proceed instead. This supplementary report provides an additional recommendation about establishing an independent panel to decide on the relevant statutory planning application.

2. BACKGROUND AND CONTEXT

- 2.1. Council is the freehold owner of the ground level car park at 121 Liardet St Port Melbourne (sometimes referred to as 3 Kyme Place). In a proposal similar to the Balaclava Woodstock development, the proposal would see the Port Phillip Housing Association building a four storey development over the car park, with notionally 27 studio units and 3 one bedroom apartments.
- 2.2. The proposal involves a land swap, as it would be contingent upon PPHA and Office of Housing agreeing to relinquish rights at two residential properties at 144 Nott St Port Melbourne and 2/63 Carlisle St St Kilda. If council later approved sale of these properties this would provide recompense for the transfer of air rights over the 121 Liardet St car park.
- 2.3. On 28 April 2008 the Council decided it intended to reconfigure the property boundary and to commence section 223 statutory consultation processes about the possible discontinuation of a portion of road and transfer of land, with a decision to be made following the consultation process. Following public advertisement, 51 submissions from the public were received including 45 objections.
- 2.4. Concerns raised in the objections principally related to statutory planning matters such as traffic circulation and amenity. On 2 June 2008, the Strategy & Policy Review Committee recommended that to best address concerns raised, the transfer of land process be deferred. If council accepts this recommendation, the statutory planning process can proceed and the Port Phillip Housing Association can proceed to prepare a statutory planning application, after considering and consulting with local residents. If a planning permit is issued, then the transfer of land process will be started again.
- 2.5. The Strategy & Policy Review Committee further requested that a supplementary report be brought to the Ordinary Council meeting on 23 June, setting out a proposal to appoint a committee under section 86 of the Local Government Act to decide on the anticipated planning application to be made by Port Phillip Housing Association in respect of the 121 Liardet St (Kyme Place) car park in Port Melbourne, with the membership to include appropriate councillor and community representation and planning expertise.

3. SUPPLEMENTARY INFORMATION

Establishment of Independent Panel

- 3.1. The City of Port Phillip is the land owner for the site in question. The Council has a significant and ongoing relationship with the Port Phillip Housing Association, in that a member of the council sits on the Board of the Association, the council has previously contracted housing projects and transferred property to the Association, and the council provides funding to the Association. The council also has a policy in favour of affordable housing programs.

- 3.2. Given the various safeguards and practices in place, including the provision of independent advice by statutory planning officers, it is likely that the council could still act as Planning Authority for the planning application submitted by Port Phillip Housing Association (although the councillor on the board of the Association would need to consider whether to declare a conflict of interest in line with the *Local Government Act*).
- 3.3. However, given the factors at 3.1, some members of the public may consider that the planning application assessment process would benefit from a body independent to the council making the planning decision.
- 3.4. The Council is able to delegate planning authority powers to a special committee established under section 86 of the *Local Government Act*.
- 3.5. So, if an independent panel was established it would be as a special committee under section 86 of the *Local Government Act*. The role of the panel would be to make a decision about whether to issue a planning permit and place conditions on such a permit, in line with the provisions of the *Planning & Environment Act* and with existing planning schemes and policies. It would not be a committee which set policy.
- 3.6. A name for the panel could be the Port Melbourne Affordable Housing Project Planning Assessment Panel.

Panel membership

- 3.7. If the panel was established, it could include community representatives, members with planning expertise, and councillor representation. The panel should have an odd number of members for voting purposes, so an appropriate makeup might be two community representatives, two members with planning expertise, and one councillor.
- 3.8. If a councillor is to be on the panel, the council should decide which councillor. Given that the panel can only make a statutory planning decision on statutory planning grounds, the representative could be the Chairperson of the Statutory Planning Committee.
- 3.9. Recently, following the November 2007 Supreme Court of Victoria case *Winky Pop Pty Ltd vs Hobsons Bay CC*, there has been debate in the local government sector about the need for natural justice when a council is making planning decisions. In the *Winky Pop* case, a Hobsons Bay councillor had himself made a submission in relation to proposed amendments to a planning scheme. The councillor had presented to the panel hearing submitters. In the final council decision on the planning scheme amendments the vote was 4-3 and the councillor's vote was decisive. The decision of the Supreme Court was that the councillor had sufficient prejudgement that he should not have voted; on the grounds that rules of natural justice had been breached, the decision of the council was quashed.

- 3.10. It should also be noted that part of the *Winky Pop* Supreme Court judgement by Justice Kaye reads:
- “In determining whether there was prejudgment on behalf of a councillor, it must be borne in mind that councils are democratically elected, and that councillors necessarily carry out political and legislative roles. Accordingly, a councillor is not necessarily disqualified from participating in a decision because the councillor, previously, has held and expressed views on the matter in question.”
- 3.11. It seems likely that the judgement made about councillor actions in *Winky Pop* could also be applied to other members of a committee or panel with statutory planning powers.
- 3.12. Therefore, if a panel was established to decide on the planning application for the Kyme Place site, then people who have fully prejudged the matter should not participate in the voting and decision making process (bearing in mind Justice Kaye’s words that previously holding or expressing views does not automatically constitute prejudgement).
- 3.13. Clearly, the council would want to include high quality community, expert and councillor representation on this panel to decide the planning application. It is likely that this representation would include people who have previously held an opinion or expressed a view.
- 3.14. However, it is also important that the panel’s decision be valid. The decision needs to be transparent and have followed the rules of natural justice. Real and perceived impartiality is critical.
- 3.15. It might therefore be necessary to ensure that the panel does not include in its membership any members who have pre-judged the issuing of a planning permit (as different from people who have previously held an opinion or expressed a view).
- 3.16. In appointing people to the panel, the council should be mindful that it not appoint people who have fully prejudged the matter of issuing a planning permit to the Port Phillip Housing Association. Two options would be:
- (a) Exclude from panel membership those who have previously made submissions to the sale/transfer of land process.
 - (b) Exclude from panel membership those who have made submissions to the sale/transfer of land process, where those submissions address statutory planning matters and would indicate prejudgement of the decision to issue a planning permit.

- 3.17. Option 3.16 (a) above is clearer and might be 'safer' in legal terms. However, it runs the risk of excluding from membership those whose appointment would not actually give rise to a reasonable apprehension of bias. Option 3.16 (b) is more open to interpretation, but is less liable to unnecessarily exclude candidates. The recommendation in this report applies Option 3.16 (b).
- 3.18. Clearly, anyone appointed to the panel should not make a submission to the statutory planning exhibition process which would take place after the council receives an application for a planning permit from the Port Phillip Housing Association or its agent.

Timeline

- 3.19. If the recommendations of this report are adopted it would be expected that the timeline would be as follows:
- *July*: resident/trader positions on the committee are advertised in local papers and Planning Panels Victoria is invited to nominate two experts.
 - *August*: Council appoints the five members to the panel and appoints one of the two independent members as chairperson.
 - *September*: the panel meets for the first time and decides upon any reports to be commissioned.
 - *After the planning application from Port Phillip Housing Association has been received and exhibited*: panel hears submissions from members of the public, considers reports and advice, and makes decision on the planning permit.

4. RECOMMENDATION

That the Council resolve:

- 4.1. That having commenced the statutory procedures for the sale of land and road discontinuance in respect of land at 121 Liardet Street and Kyme Place, Port Melbourne, 144 Nott Street, Port Melbourne, and 2/63 Carlisle Street, St Kilda, in accordance with the requirements of the Local Government Act and having received and considered submissions and heard from persons speaking in support of their submissions, to defer its decision.
- 4.2. To advise all persons who made a submission and the local community of its decision and the reasons for it.
- 4.3. To encourage the Port Phillip Housing Association to engage with the local community to explain its programs and plans and devise a revised plan for the proposed community housing project before making an application for a statutory planning permit.
- 4.4. To establish a Port Melbourne Affordable Housing Project Planning Assessment Panel as set out in the attached Terms of Reference
- 4.5. To approve the Instrument of Delegation to the Port Melbourne Affordable Housing Project Planning Assessment Panel as set out in the attached document
- 4.6. To invite Planning Panels Victoria to nominate two independent planning experts for consideration by the Strategy & Policy Review Committee in August
- 4.7. To advertise for expressions of interest in local newspapers in July for the resident and trader positions on the Port Melbourne Affordable Housing Project Planning Assessment Panel
- 4.8. That a report assessing applications for the resident/trader membership of the panel be brought to the August Strategy & Policy Review Committee, with assessment to be on the following criteria:
 - 4.8.1. Appreciation of land use planning, urban design or related matters
 - 4.8.2. An understanding and commitment to local community building
 - 4.8.3. An understanding of negotiating competing demands around public space

**ORDINARY MEETING OF COUNCIL
23 JUNE 2008**

SUPPLEMENTARY

A15	REVISED SECTION OF PROPOSED DISCONTINUANCE AND SALE OF RIGHT OF WAY NO R2419 REAR 124 HEATH ST, PORT MELBOURNE.
LOCATION/ADDRESS:	REAR 124 HEATH ST, PORT MELBOURNE
RESPONSIBLE EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION SYSTEMS & SUPPORT
AUTHOR:	TOULA KOTSABOUKIS, PROPERTY ADVISOR, PROPERTY & VALUATIONS
FILE NO.:	2540/124-01
ATTACHMENTS:	SITE PLAN & PHOTOGRAPH

1. EXECUTIVE SUMMARY

- 1.1. This report is to finalise the discontinuance matter concerning Right of Way No. R2419 rear 124 Heath St, Port Melbourne. Having investigated the submissions made by residents of Raglan St in detail, it is now proposed that the discontinuance and sale only apply to the enclosed and occupied land at the rear of 124 Heath St and not the unenclosed strip along the side boundary.

2. BACKGROUND AND CONTEXT

- 2.1. When this matter was first investigated it was proposed to discontinue a section of road at the rear of 124 Heath St which is enclosed by buildings and occupied by the owners of 124 Heath St, Port Melbourne.
- 2.2. In negotiations, the owners of 124 Heath St proposed to purchase the road at the rear and a strip of unenclosed road along the south western boundary of the property. This is the proposal which was advertised and the subject of the report to Council's Strategy and Policy Review Committee meeting on 2nd June 2008. At this meeting the committee heard from the owners of 82 Raglan Street who are opposed to the discontinuance and sale of the unenclosed section of road. In the week following the meeting there was a walk through with the owners of 82 Raglan Street.
- 2.3. Now that the submissions have been received and heard Council can take those submissions into consideration and make a decision to finalise the statutory process for road discontinuance and sale of the land.

3. SUPPLEMENTARY INFORMATION

- 3.1. Road discontinuance and sale of the occupied land at the rear of 124 Heath St, Port Melbourne, is not in dispute. Submissions relate to the Right of Way between the rear of Raglan St properties and the side boundary of 124 Heath Street.
- 3.2. The total width of the Right of Way between the rear boundaries of 82 Raglan Street and the side boundary of 124 Heath Street is approximately 2.04metres. On maps the Right of Way is divided longitudinally into 2 strips as follows;
 - 3.2.1. A strip abutting the rear of the Raglan Street properties (1.226m approx) which is a blue stone drain, and
 - 3.2.2. A strip abutting 124 Heath Street (0.814m approx) constructed in asphalt. This is the section which was included within the advertised proposal.
- 3.3. Along the rear boundary of the Raglan Street properties there is a high brick wall with standard door openings.
- 3.4. The substance of the submissions, is that if the 0.814 metre wide strip is incorporated into the 124 Heath Street property it will leave a narrow land which;
 - 3.4.1. Has an uneven surface which is unsafe for pedestrians,
 - 3.4.2. Would be too narrow to enable Raglan Street residents to manoeuvre shopping carts, bikes and rubbish bins through their doorways, and
 - 3.4.3. Would leave a pokey public space which could become a haven for undesirable behaviour.
- 3.5. While the original proposal ensures that access for the Raglan Street residents is retained, the quality of the access is diminished. The nature of resident objection is such, that it is recommended that Council does not proceed with road discontinuance and sale of the unenclosed section of the Right of Way.
- 3.6. If approved, Council has been advised by the solicitors for the owner of 124 Heath Street that they expect the owners will proceed with the purchase of the enclosed section at the same price in accordance with the policy for sale where there is possessory right.

4. RECOMMENDATION

That Council receive the supplementary report and resolve:

- 4.1. That the statutory procedure be finalised and the section of Right of Way at the rear of 124 Heath St, Port Melbourne, be discontinued and the land sold to the abutting property owner.

**ORDINARY MEETING OF COUNCIL
23 JUNE 2008**

SUPPLEMENTARY

A16	PROPOSED LEASE AGREEMENT TO MELBOURNE WATER CORPORATION - USE OF FENNELLS RESERVE, MELBOURNE MAIN SEWER REPLACEMENT PROJECT
LOCATION/ADDRESS:	FENNELLS RESERVE - CROWN ALLOTMENT 2, SECTION 41, INGLES, EVANS AND BOUNDARY STREETS, PORT MELBOURNE
RESPONSIBLE EXECUTIVE DIRECTOR:	SALLY CALDER, EXECUTIVE DIRECTOR ORGANISATION SYSTEMS AND SUPPORT
AUTHOR:	JEANENE SIMMONS, SENIOR PROPERTY ADVISOR
FILE NO.:	20/01/73
ATTACHMENTS:	ATTACHMENT 1 – FENNELLS RESERVE SHAFT, INDICATIVE WORK SITE VIEW ATTACHMENT 2 – LANDSCAPE PLAN, POST CONSTRUCTION

1. EXECUTIVE SUMMARY

- 1.1. This supplementary report provides additional information to Council on the proposed lease agreement to Melbourne Water Corporation for use of Fennell Reserve for a period of up to 7 years.

2. BACKGROUND AND CONTEXT

- 2.1. At its meeting on 2 June 2008, the Strategy and Policy Committee sought further advice regarding the re-instatement of Fennell Reserve, Melbourne Water Corporation's public consultation process, the Swallow Street site and planning approvals for use of Fennell Reserve.
- 2.2. Additional information has been received from Melbourne Water Corporation and the Department of Sustainability and Environment regarding project timelines and the lease approval process.

3. SUPPLEMENTARY INFORMATION

- 3.1. Clarification of Crown Allotment and Section Details – Fennell Reserve
- The correct land description for Fennell Reserve is Crown Allotment 2, Section 41, Ingles, Evans and Boundary Streets Port Melbourne. The previous report dated 2 June 2008 includes an incorrect reference to Section 44. This discrepancy stemmed from a minor typographical error in the external market valuation report.

3.2. Re-instatement of Fennell Reserve by Melbourne Water Corporation

Melbourne Water Corporation will be required to re-instate Fennell Reserve to an agreed standard at the end of the project and conditions to this effect will be included in the proposed lease. Detailed landscape plans (showing the net improvement in visual site amenity and layout) and a copy of the re-instatement agreement will be attached to the lease for assessment purposes.

At the completion of the project, the only visible components in Fennell Reserve will be two small (600mm diameter) access manhole lids and a ventilation pole (Refer to Attachment 1 – Fennell Reserve Shaft Indicative Work Site View and Attachment 2 – Landscape Plan Post Construction). No odours will be discernible from the manholes as the lids are air tight. Odours will be emitted from the ventilation pole, but as this is 10 metres high (in line with all other existing poles along the Melbourne Main Sewer) it is very unlikely that these odours will be discernible or cause concern to users of Fennell Reserve.

3.3. Public Consultation Process

Melbourne Water Corporation’s consultation activities are shown below:

Date	Activity
21 June 2007	Project bulletin distributed to residents and businesses in Port Melbourne, South Melbourne and Docklands (approx 2,500 copies).
21 June 2007 - 5 July 2007	Door knocking by Context around Fennell Reserve and Swallow Street shaft site areas. (A letter was left, if no one was present at the time).
19 July 2007	Community Information Session held.
8 August 2007	Meeting held with Port Phillip Primary School.
20 August 2007	Follow up letter sent to attendees at July Community Information Session.
14 September 2007	Letter sent to all relevant State and Federal MPs summarizing response to community feedback.
12 December 2007	Phone calls made to interested residents near the Swallow Street site.
17 December 2007	Newsletter distributed to all residents and businesses along the proposed alignment route.
5 February 2008	Meeting held with Port Phillip Primary School.

Melbourne Water Corporation's next Community Information Session is scheduled for 24 June 2008 from 6.30pm to 8.00pm at the Port Phillip Specialist School, Nott Street, Port Melbourne.

3.4. Planning Approvals

Melbourne Water Corporation does not require a planning permit for use of Fennell Reserve for the purpose of a minor utility installation or for any buildings and works associated with the use.

3.5. Swallow Street Site

The new sewer will connect into to the old sewer system at the Swallow Street site. During the works period the intersection of Byrne and Ross Streets will be blocked.

In response to community feedback regarding the potential impact on traffic flow in the area, a 2 way temporary crossover point on the median strip between Swallow and Byrne Streets will be constructed to allow residents and visitors access in and out of Swallow Street. This crossover point is located between existing trees so no vegetation removal will be required.

Construction activity at this site will occur approximately 12 months after the commencement of works at Fennell Reserve.

As the proposed works at the Swallow Street site will be carried out in a portion of road reserve, a lease agreement is not required. However Melbourne Water Corporation will need to apply for a road opening permit through Fulton Hogan for this location.

3.6. Project Timeline and Penalties

The tunnel boring machine will be launched from Fennell Reserve, firstly to the south-west to Swallow Street and then north to the Yarra River.

Melbourne Water Corporation would like access to Fennell Reserve as early as possible so that it can be prepared for the storing of components and for shaft construction. These early site works (which are expected to take 10 to 11 weeks) include:

- Power line diversion;
- Hoarding erection;
- Vegetation removal;
- Top soil removal; and
- Concrete slab construction.

Sheet piling and shaft excavation will then follow. These additional activities are expected to take 28 weeks. The total estimated lead time to the end of the shaft preparation work is therefore some 38 to 39 weeks.

In the event of any delay to the commencement of works at Fennell Reserve, Melbourne Water Corporation would be liable for the contractor's downtime costs which are estimated to be in the order of \$5,000 to \$6,000 per day.

3.7. Parliamentary Scrutiny Process – Department of Sustainability and Environment (“DSE”)

Approval must be sought from the Minister for Environment and Climate Change to the grant and purpose of the proposed lease to Melbourne Water Corporation.

As Fennell Reserve was set aside as an “ornamental plantation” under Section 4(1)(w) of the Crown Land (Reserves) Act 1978, DSE has advised that the Minister for Environment will need to sign an Order which will be published in the Government Gazette and then tabled in both Houses of Parliament. The Order must be tabled for 5 consecutive days and the day after the last sitting day is the day that the approval comes into effect. DSE is currently preparing the necessary paperwork for the Order. It is anticipated that the matter will proceed through Parliament in late August 2008.

3.8. Status of Melbourne Water Corporation

Melbourne Water Corporation falls within the definition of a ‘public body’ for the purposes of the Local Government Act 1989 (the “Act”). Section 191 of the Act indicates that a proposed lease agreement to a public body is not subject to Section 190 of the Act (being a public advertisement process and the hearing of submissions on the matter).

Recent legal advice from Maddocks Lawyers confirms that notwithstanding the above, Council has the discretion to still advertise the proposed lease to Melbourne Water Corporation and invite submissions. Given the scale of the proposed project and the level of community interest, it is recommended that Council elect to do so. It is anticipated that Council's process will run concurrently with the parliamentary scrutiny process being undertaken by DSE and therefore not cause any undue delay to Melbourne Water Corporation.

4. RECOMMENDATIONS

That Council receive the supplementary report and resolve:

- 4.1. to commence the statutory procedures under Section 190 of the Local Government Act 1989 (the "Act") and publish a notice in local newspapers inviting interested persons to make a submission under section 223 of the Act for the proposed lease of the land described as Fennell Reserve to Melbourne Water Corporation.
- 4.2. to appoint its Strategy and Policy Review Committee to hear and consider any submissions made under Section 223 of the Act at its meeting to be held on 4 August 2008.