

Committee report to Council

Agenda item 5.1

Council

Proposed discontinuance and sale of PL5208, North Melbourne

29 June 2021

Committee Submission (223) Committee

Presenter Kim Wood, Chief Legal Counsel

Purpose

1. The purpose of this report is to recommend the discontinuance and sale of Private Lane PL5208, North Melbourne, pursuant to section 206(1) and clause 3 of schedule 10 of the *Local Government Act 1989*.

Consideration at Committee

2. Following consideration by the Submissions (223) Committee (the Committee) on 6 May 2021 (refer to Attachment 1), the Committee made a recommendation to Council as presented below.

Recommendation

3. That Council:
 - 3.1 Discontinue the road known as PL5208 shown on the plan in the public notice published in The Age of 17 April 2021 and sell the resulting Land to the abutting landowner, 8-10 Curzon Place Pty Ltd (Purchaser) for \$30,000 plus GST, subject to the Purchaser entering into an agreement with the Council under section 173 of the *Planning and Environment Act 1987* to be registered on the land, requiring a minimum one metre wide unencumbered path on the land for use by the owner of 26 Little Curzon Street, North Melbourne to access their rear yard and gate, allow unimpeded access over the Land for the reasonable maintenance of the wall and fence and for the quiet enjoyment of the Land by the owner of 26 Little Curzon Street North Melbourne for the reasons that:
 - 3.1.1 the section 173 agreement addresses the concern of the objector; the owner of 26 Little Curzon Street, North Melbourne and has been agreed to by the objector and the Purchaser
 - 3.1.2 remnant private lanes are potential security risks to the community and the discontinuance and sale will also support the development at 8-10 Curzon Place.
 - 3.2 Notify in writing every person who has lodged a separate submission of the decision and reasons for the decision.

Council Report Attachment:

1. Submissions (223) Committee, Agenda item 5.1, 6 May 2021 (Page 2 of 10)

Management report to Submissions (223) Committee

Agenda item 5.1

Proposed Discontinuance and Sale of PL5208 North MelbourneSubmissions (223)
Committee

Presenter: Leon Wilson, Licensed Surveyor GIS Team

6 May 2021

Purpose and background

1. This report addresses two submissions received to a proposed road discontinuance and sale pursuant to section 206(1) and clause 3 of schedule 10 of the Local Government Act 1989 ('the Act'), of Private Lane PL5208 (the Land), as shown hatched on the attached plan (see Attachment 2).
2. The Director Infrastructure and Assets on 5 February 2021, acting under sub-delegated Council powers, approved commencement of the discontinuance and sale process subject to conditions which included public consultation (see Attachment 2 for a copy of the public notice).
3. The submissions (see Attachment 3) raised the points as follows:
 - 3.1. The abutting land owner to the south has indicated they wish to purchase the Land or at the very least half of the Land having corresponded with Council in 2008.
 - 3.2. The applicant's representative advises they are not buying the Land for profit and wish to upgrade the Land with landscaping and pedestrian access for five small scale residences in the proposed development on their property to the north of the Land (application TP-2019-1011). They are offering to allow the adjoining neighbours to the south to access the Land for maintenance of their wall and for use of the space.

Key issues

4. Extracts of the title diagrams for the abutting properties and the Land show no easements in favour of any of the other properties (see attachment 2).
5. In 2008 a copy of the discontinuance policy and process was provided to the property owners to the south and for what every reasons no further correspondence to proceed has been received. There are file notes about a discussion on the process to erect a gate in early 2009.
6. TP-2019-1011 for the applicant's property is currently at VCAT having received 3 objections, one of the issues is the use of the Land for access and setting back the residences.

Recommendation from management

7. That the Submissions (Section 223) Committee:
 - 7.1. Consider all written submissions in relation to the proposal and hear any person wishing to be heard in support of their submission and then make a recommendation to Council
 - 7.2. Recommend Council notify in writing every person who has lodged a submission of its decision and the reasons for its decision.

Attachments:

1. Supporting Attachment (Page 2 of 9)
2. Public Notice and plans (Page 3 of 9)
3. Submissions (Page 6 of 9)

Supporting Attachment

Legal

1. Pursuant to sections 206(1) and clause 3 of Schedule 10 of the Act, Council has given public notice that it proposes to discontinue and sell PL5208.

Finance

2. The road is a private road and is not managed or maintained by the Council. If the application is approved and the Road is discontinued, the Act vests the subject land in the Council with the power to transfer the land. The land will be transferred to the applicant who is the current owner for \$30,000 plus GST as detailed in the public notice and in accordance with the Road Discontinuance and Sale Policy approved by Council on 30 May 2017.
3. Council's costs associated with managing the application will be met by the applicant. This is regardless of whether the application is successful or not, or if it is withdrawn. These costs include property valuation, general advertising, gazetting of the Road discontinuance in the Government Gazette and associated legal costs.

Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

Health and Safety

5. In developing this proposal, no Occupational Health and Safety issues or opportunities have been identified.

Stakeholder consultation

6. The proposal was given public notice. Overall the consultation involved:
 - 6..1. advertising in The Age on the 17 April 2021
 - 6..2. a letter was sent to the owners of abutting properties
 - 6..3. display on the Council website under Public Notices

Relation to Council policy

7. The proposed discontinuance and sale complies with the Road Discontinuance and Sale Policy approved by Council on 30 May 2017.

Environmental sustainability

8. This proposal has no significant impact on environmental sustainability.

MELBOURNE CITY COUNCIL**Proposed discontinuance and sale of PL5208, North Melbourne**

Notice is given pursuant to sections 189, 206(1) and 223 of the *Local Government Act 1989* (Act) that the Melbourne City Council (Council) proposes to discontinue the road known as PL5208 North Melbourne as shown hatched on the plan, and sell the resulting land to 8-10 Curzon Place Pty Ltd (the abutting landowner) for \$30,000 plus GST (Proposal).

Any person may make a written submission on the Proposal to the Council. All submissions received by the Council on or before 15 April 2021 will be considered in accordance with section 223(1) of the Act, by the Council's Submissions (Section 223) Committee (Committee).

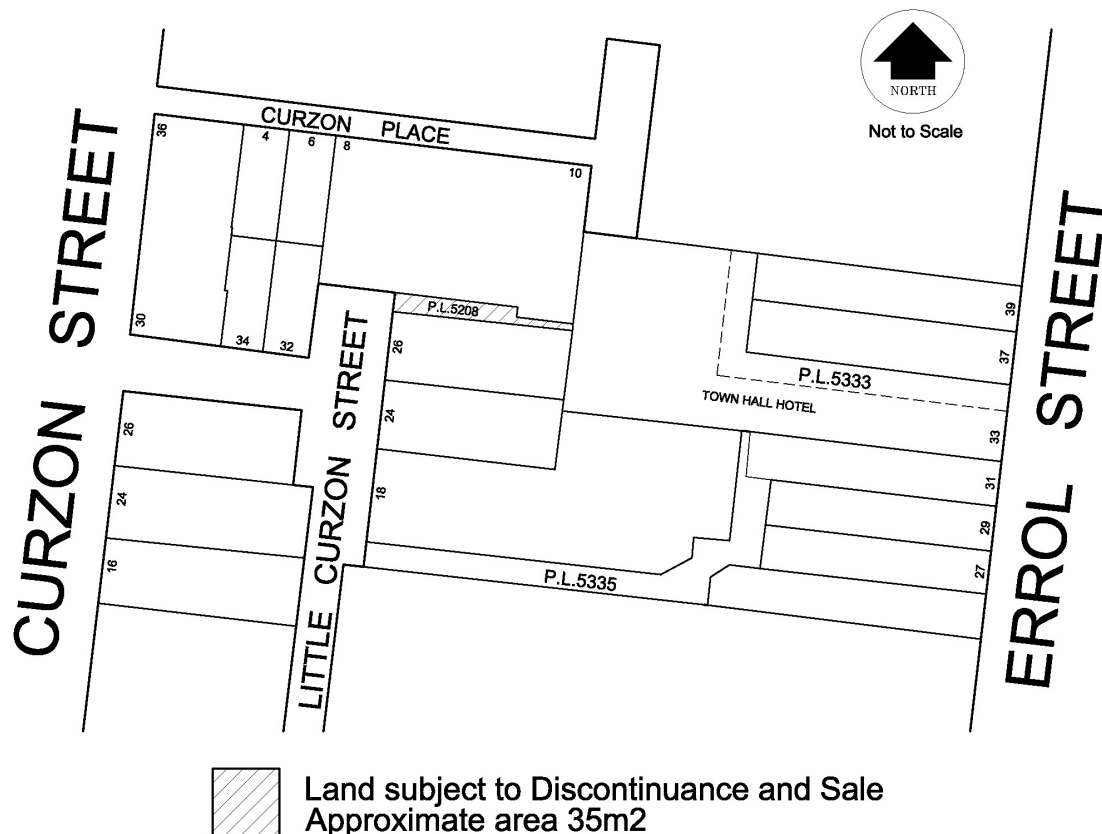
If a person wishes to be heard in support of their submission they must include the request to be heard in the written submission and this will entitle them to appear in person, or by a person acting on their behalf, before a meeting of the Committee, scheduled to be held on 6 May 2021, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

Written submissions should be marked 'Proposed discontinuance and sale of PL5208' and addressed to the Director Governance, Melbourne City Council, GPO Box 1603, Melbourne, 3001. Written submissions can be made via mail, email to com.meetings@melbourne.vic.gov.au or on-line at <https://comdigital.wufoo.com/forms/rly4bj60tdagsq/>

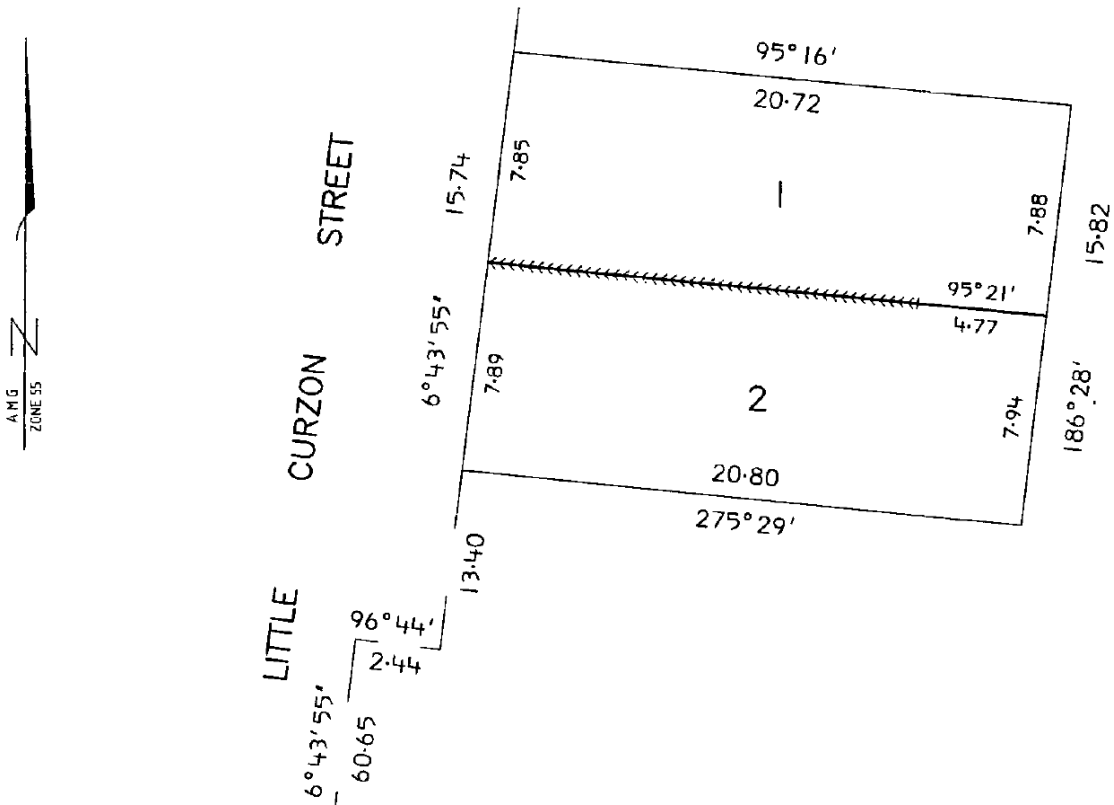
Written submissions cannot be delivered in person.

Submissions form part of the public record of the meeting (including any personal information you provide) and will be published on Council's website (accessible worldwide) for an indefinite period. A hard copy will also be made available for inspection by members of the public at Council offices.

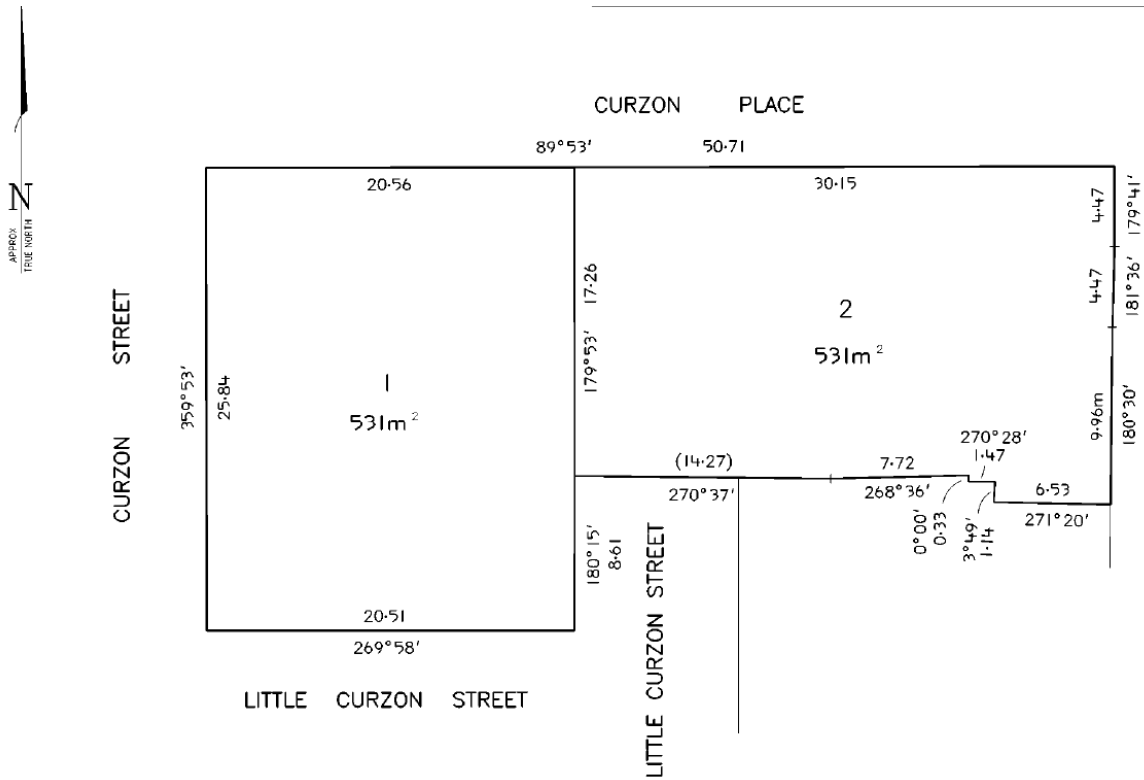
If you have any concerns about how Council will use and disclose your personal information, please contact the Council Business team via email at privacy@melbourne.vic.gov.au.



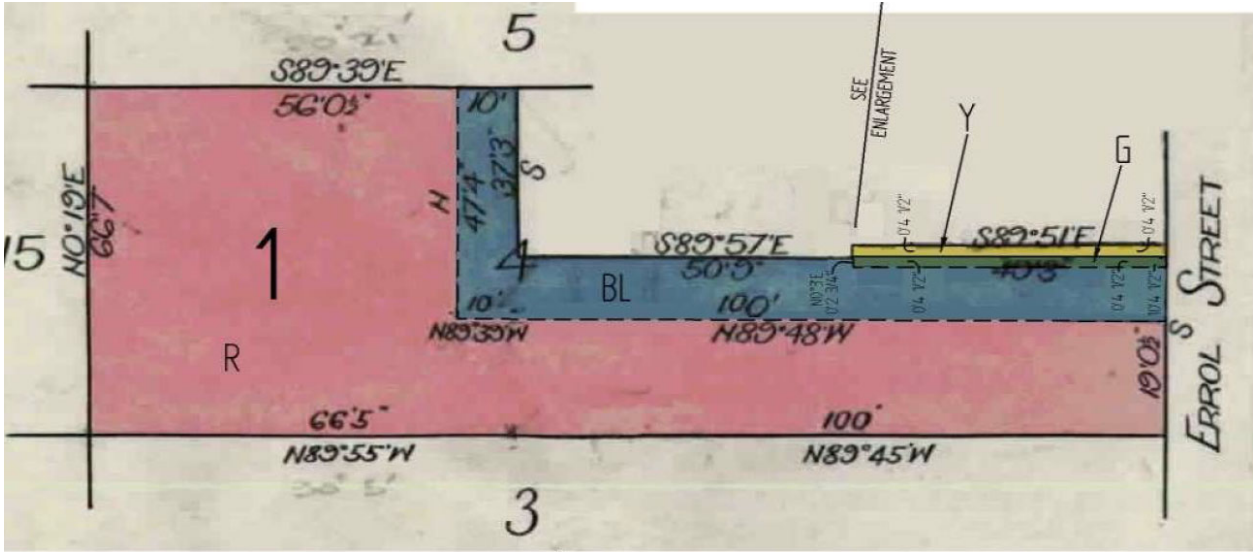
Title diagram for property to the south extract of PS542327S



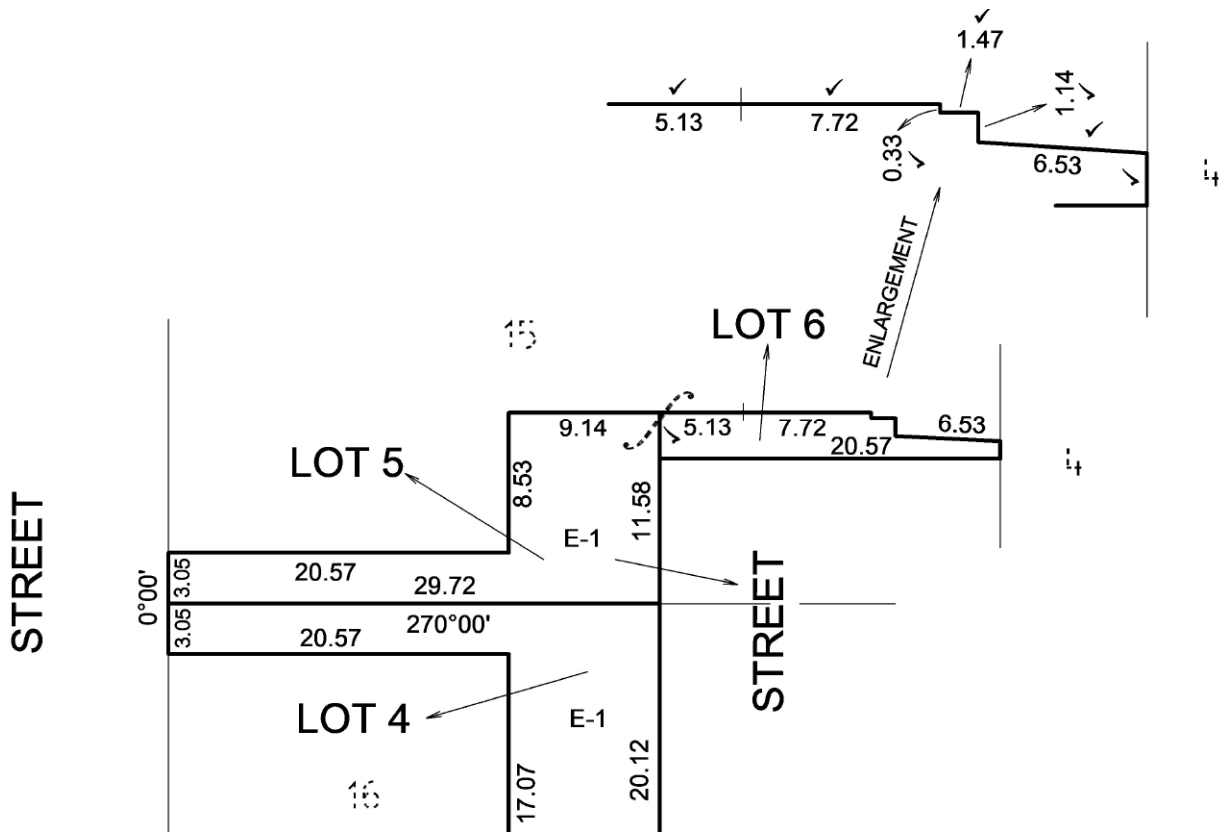
Title diagram for property to the north extract of PS621920S



Title diagram for property to the east extract of TP227584R



Title diagram for the Land extract of TP969209E



Your reference: 57/6/5208
Our reference: PJW:JFC:1040969

13 April 2021

Mr L Wilson
City of Melbourne

By email: survey@melbourne.vic.gov.au

Dear Sir

PROPOSED DISCONTINUEANCE AND SALE OF PL5208 NORTH MELBOURNE

We act on behalf of _____ who own the property at _____ which adjoins the above-mentioned laneway.

Following discussions with Council in and around 2008 our clients erected a gate at the west end of the laneway and have exclusively occupied the laneway since. The previous owner of the property to their north (30-36 Curzon Street, North Melbourne) had at that time indicated that it would consent to the laneway being discontinued and sold or transferred to our clients but for various reasons that proposed sale or transfer did not proceed at that time.

Our clients were very surprised to learn of the proposal for the closure of the lane and for it to be sold to the current owner of the property to their north particularly in circumstances where it is clearly being occupied by our clients and in circumstances where they were not approached by Council to ascertain their interest in acquiring it.

Our clients therefore wish it recorded that they wish to acquire the laneway or at the very least that the laneway be divided into two parts with the boundary between those parts starting at the mid-point of the western end of the laneway and ending at the eastern end of the laneway and for our clients to be given the opportunity to acquire the southern half of the divided laneway with their neighbours to the north being able to acquire the northern half.

Please let us know whether the committee meeting on 6th May will determine Council's position in relation to the sale and, if that is the case, whether any decision made at that meeting will be a final decision and incapable of being appealed or further discussed as if that is the case then our clients may well wish to address the issue in person at the meeting.

We have also submitted this letter via email to com.meetings@melbourne.vic.gov.au and by mail to Director Governance, Melbourne City Council, GPO Box 1603, Melbourne 3001.

Yours faithfully

CORNWALLS

Contact
Peter Window
Lawyer

Thursday, 15 April 2021

ATTN: Director Governance, Melbourne City Council
ADDRESS 1: GPO Box 1603
ADDRESS 2 Melbourne 3001

Dear City of Melbourne Director of Governance,

RE: Proposed discontinuance and sale of PL5208

In response to the advertised notice proposing to discontinue the road known as **PL5208 North Melbourne**, we write to submit our letter of support for this land sale to the owners of 8-10 Curzon Place.

Our Clients approached Breathe Architecture because of our continued commitment not only as sustainable architects but also as advocates for the city. We have worked closely with several municipalities including Darebin, City of Yarra, City of Moreland and the City of Melbourne on community and pro-bono projects, as well as urban design and civic infrastructure pieces that look to better the lives of not only the residents of the buildings we are designing, but also the broader community.

This piece of land is for all intents and purposes a public lane. It was lost in a history of pre-digitised titles but has been used for access to the rear of buildings in the same vein as the laneway network throughout the City of Melbourne. We want to continue this legacy of activating laneways and prioritising pedestrian usage, as well as continue the City of Melbourne strategy work of increasing canopy tree cover and reducing the urban heat island effect in the city.

Our Clients are not buying this land to develop it for profit, they instead want to purchase this land to provide a vegetated and biodiverse landscaped area that provides pedestrian friendly access and public space for all residents of the area. Five small scale residences will activate and lookout into the lane to ensure it's a safe place, with upgraded lighting also proposed. This will be an open space, and the maintenance for this landscape will be paid for by our Clients. This is a win-win for the City of Melbourne and local community.

Our Clients are happy to provide continued pedestrian access throughout this space for the adjoining neighbours to maintain their boundary wall as required, with all neighbours more than welcome to use this space and benefit from it.

To discuss this matter further with all parties, I request to be heard in support of this submission at the Committee meeting on 6th May at 3pm.

Sincerely,

Jeremy McLeod
Design Director