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AGENDA

Hearing of Submissions Committee Meeting to be held in the Council Chamber, 350 High Street Preston on Monday, 31 May 2021 at 6.00pm.

This meeting will be open to the public in line with current health restrictions. Masks are mandatory and the number of people in the public gallery will be restricted. This meeting it will also be livestreamed and may be accessed from Councils website www.darebin.vic.gov.au.

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Agenda

1. MEMBERSHIP

Cr. Lina Messina (Mayor) (Chairperson)

Cr. Gaetano Greco (Deputy Mayor)

Cr. Emily Dimitriadis

Cr. Tom Hannan

Cr. Tim Laurence

Cr. Trent McCarthy

Cr. Susanne Newton

Cr. Susan Rennie

Cr. Julie Williams

2. APOLOGIES

3. DISCLOSURES OF CONFLICTS OF INTEREST

4. CONFIRMATION OF THE MINUTES OF THE PREVIOUS HEARING OF SUBMISSIONS COMMITTEE MEETING

Officer Recommendation

That the Minutes of the Hearing of Submissions Committee Meeting held on 19 May 2021 be confirmed as a correct record of business transacted.

5. CONSIDERATION OF REPORTS

5.1 PROPOSED SALE OF THE DISCONTINUED RIGHT OF WAY/ROAD AT THE REAR OF 127 TO 133 CROOKSTON ROAD, 10 & 12 WHITE STREET AND ADJOINING 28 AND 29 MACARTNEY STREET, RESERVOIR

Author: Senior Property Services Officer

Reviewed By: General Manager, Governance and Engagement

EXECUTIVE SUMMARY

The purpose of this report is to seek the Hearing of Submissions Committee's consideration of the submissions made on the proposed sale of a parcel of land from a discontinued right-of-way/road at the rear of 127 to 133 Crookston Road, 10 and 12 White Street and adjoining 28 and 29 Macartney Street, Reservoir.

At its meeting on 19 October 2020, Council resolved to commence statutory procedures under section 206 and clause 3 of Schedule 10 of the Local Government Act 1989 regarding the proposed sale of a parcel of land from a discontinued right-of-way/road at the rear of 127 to 133 Crookston Road, 10 and 12 White Street and adjoining 28 and 29 Macartney Street, Reservoir.

Public notice was given of Council's intention to sell the land or take title (if not sold) in the Herald Sun newspaper and on Council's website on 17 November 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 18 December 2020. Council received one written submission requesting to be heard by Council in support of their submission.

It is noted that the role of the Hearing of Submissions Committee is only to 'hear' and receive submissions. There are no options for consideration, or analysis of submissions included in this report.

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will be provided to Council at a later date seeking a final resolution on the matter.

Officer Recommendation

That Council:

- (1) Receives the written and verbal submissions.
 - (2) Thanks all submitters and presenters for addressing the Committee in support of their written responses.
 - (3) Receives a report at a future Council Meeting as part of Council's deliberations in considering the proposed sale of a parcel of land from a discontinued right-of-way/road at the rear of 127 to 133 Crookston Road, 10 and 12 White Street and adjoining 28 and 29 Macartney Street, Reservoir.
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BACKGROUND / KEY INFORMATION

On 16 December 2002, Council resolved to discontinue the road bound by Crookston Road, White Street and Macartney Street, Reservoir, and to sell the land by private treaty in accordance with Council policy. However not all parcels of land were sold at the time, with the unsold parcels of land continuing to vest in Council. The Discontinuance was gazetted in the Victoria Government Gazette on 13 February 2003.

In 2018, Council officers initiated a proposal to deal with the remaining parcels of land from the former road known as Lots 1, 4 and 5 in Title Plan TP023768S shown in **Appendix A**.

Investigations revealed that the Land in Lots 4 and 5, appears to have been enclosed within the adjoining properties at 10 and 12 White Street, Reservoir, for many years (shown in the aerial view in **Appendix B**). Furthermore, the land in Lot 1 adjoining 28 and 29 Macartney Street has been constructed and is used for vehicular access to the adjoining property at 29 Macartney Street, Reservoir. Its sale was not contemplated having regard to the fact that it is still used for access and its physical characteristics.

Once initial investigations confirmed the feasibility of the proposal, Macquarie Lawyers were commissioned to undertake further consultation with a view of Council commencing the statutory procedures to facilitate the possible sale of land with a view of taking title to any land not sold, to protect Council's interests in the land and provide for a possible future sale of the land.

Whilst consultation with the adjoining property owners at the rear of 129 and 131 Crookston Road and 10 and 12 White Street., Reservoir, had elicited no interest from owners in acquiring the land in accordance with Council policy, the statutory procedures allowed owners an opportunity to make a submission to Council regarding either the proposed sale of the land or Council's intention to take title to any land remaining unsold, if desired.

Public notice was given of Council's intention to sell the land (or take title to any land not sold) in the Herald Sun newspaper and on Council's website on 17 November 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 18 December 2020. Council received one written submission from the owner of 10 & 12 White Street, Reservoir objecting to the proposal and requesting to be heard by Council in support of their submission.

Previous Council Resolution

At its meeting held on 19 October 2020, Council resolved:

That Council:

- (a) *Commences the statutory procedures under Section 189 of the Local Government Act 1989 ('the Act') to:*
- (b) *Potentially sell the land from the discontinued road adjoining the rear of the rear of 129 and 131 Crookston Road and 10 and 12 White Street, Reservoir, shown as Lots 4 and 5 respectively, on Title Plan TP023768S in **Appendix E**, to the adjoining owners, in accordance with Council Policy.*
- (c) *Gives public notice under Sections 189, 82A and 223 of the Act of the proposed sale in the appropriate newspapers and on Council's website, and in such notice, state that Council proposes to:*
- (d) *Potentially sell the land from the former road to the owners of 129 and 131 Crookston Road and 10 and 12 White Street, Reservoir, by private treaty.*

- (e) *Transfer to itself any land that remains unsold, particularly, Lot 1 on Title Plan TP023768S in **Appendix E**, adjoining the side of 28 and 29 Macartney Street, Reservoir.*

COMMUNICATIONS AND ENGAGEMENT

Consultation with all adjoining property owners as well as internal Council departments and external service authorities was completed at the time of the original road discontinuance in 2002, in accordance with Council policy at that time. Easements in favour of both Council and Yarra Valley Water were saved over the Land at the time.

More recently, Public notice was given of Council's intention to sell or take title to the subject road in the Herald Sun newspaper and on Council's website on 17 November 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 18 December 2020. Council received one written submission requesting to be heard by Council in support of their submission in regard to the proposal.

Whilst consultation with the adjoining property owners at the rear of 129 and 131 Crookston Road and 10 and 12 White Street., Reservoir, had elicited no interest from owners in acquiring the land in accordance with Council policy. The intention is to transfer title to remaining unsold land to protect Council's interests in the land and provide for a possible future sale.

Consultation with the community

The statutory procedures require Council to give public notice of its intentions to sell or take title to the land at the rear of 127 to 133 Crookston Road, 10 and 12 White Street and adjoining 28 and 29 Macartney Street, Reservoir, and invite submissions from affected parties.

Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise with the proposal. In addition, all abutting property owners would be advised of the proposal in writing and informed of their right to make a submission. Following which, a report will be presented to Council for a decision on each of the matters.

Amendments to the Local Government Act 1989

Section 189 (Restriction on power to sell land) of the *Local Government Act 1989* (Act) will be revoked on 1 July 2021 and will be replaced by Section 114 of the *Local Government Act 2020*.

Section 114 of the *Local Government Act 2020* is similar to section 189, however the exemption from compliance with section 223 (the right to make a submission) has been removed.

Because section 223 does not apply under the 2020 Act, from 1 July 2021, any sale of land from a discontinued road must first comply with the community engagement provisions of Council's Community Engagement Policy.

Accordingly, from 1 July 2021 Council will be required to undertake a 2 staged process of first resolving to discontinue a road and sell the land under clause 3 of Schedule 10 of the Act and then propose the sale of the land under section 114 of the 2020 Act

ANALYSIS

Alignment to Council Plan / Council policy

Goal 6 - A well governed Council

Property Assets Management Strategy

Sale of Minor Council Property Assets Policy

Environmental Sustainability Considerations

There are no factors in this report which impact upon environmental sustainability considerations

Climate Emergency

There are no factors in this report which impact upon climate change.

Equity, Inclusion and Wellbeing Considerations

There are no factors in this report which impact upon equity, inclusion and wellbeing considerations.

Cultural Considerations

There are no factors in this report which impact upon cultural considerations.

Economic Development Considerations

There are no factors in this report which impact upon economic development considerations.

Financial and Resource Implications

The costs associated with conducting the statutory process will be funded from existing budget allocations.

Council's Valuer has placed a market value of \$341.00 per square metre (inc GST) on the Land. The sale of Lots 4 and 5 on Title Plan TP 023768S, with a total area of 122 m² would have realised an amount of \$41,602.00 (\$20,081.00 for each lot, including GST) if sold. The Land would also attract Council rates if transferred.

Legal and Risk Implications

Risks are covered under the analysis of each option.

Operational Impacts

There are no factors in this report which impact upon operations.

DISCUSSION

In accordance with section 189 of the *Local Government Act 1989*, the Council is required to take into consideration all submissions received in relation to the proposed sale of the former road land and after it has made a decision, notify all persons who have made a submission of the decision and the reasons for the decision.

Council received one written submission in regard to the proposal and has requested to be heard in support of their submission by Council.

Submission – Mr Tuan Nguyen Minh (Appendix C)

- Submission received on 22 December 2020.

- Mr Nguyen is the owner of 10 and 12 White Street, Reservoir.
- Mr Nguyen strongly objects to Council transferring title to the land (known as Lots 4 and 5 in TP023768S) to itself, which is enclosed within his property boundary.
- Mr Nguyen's objection is based on his ongoing care and maintenance costs incurred during the long term occupation of the land.
- Mr Nguyen wishes to be heard by Council in support of his submission.

Mr Nguyen has requested to be heard in support of his written submission and accordingly has been advised of the time, date and place of this meeting of Council's Hearing of Submissions Committee.

Council's property portfolio must meet current service needs while providing the flexibility to meet future requirements. Roads, reserves, revenge strips and other pieces of land of unusual shape and limited usefulness that are less than 200m² in area (collectively referred to as minor Council property assets) were originally set aside in early plans of subdivision for a particular purpose, such as access or drainage. In many cases these parcels of land are still required for and need to remain open and available to the public. In situations where a minor Council property asset is no longer reasonably required for that purpose or any other strategic purposes it may be considered surplus and suitable for sale.

OPTIONS FOR CONSIDERATION

It is recommended that Council proceed with the Hearing of Submissions as outlined in this report. The role of this Committee is only to 'hear' submissions.

Council must provide submitters that have requested to be heard the opportunity to do so, in accordance with Section 223 of the *Local Government Act 1989*. Should Council decide not to enable the Hearing of Submissions to take place, it would be in breach of the *Local Government Act 1989*.

Council may elect to reschedule the meeting.

Option 1

Council could resolve to abandon the proposal, take no action or may make no resolution on the matter. This option would mean that the land would continue to remain vested in Council and with the adjoining property owners continuing to occupy the land. Council may be perceived as knowingly encouraging and enabling property owners to continue to occupy other parcels of land within Darebin to the detriment of the community (whether financially or as a benefiting right). Council may, at some time in the future, resolve to recommence the statutory process for the sale of the land.

Option 2

Council could resolve to finalise the statutory procedures to potentially sell the Land. This would be consistent with the statutory procedures which have been completed and having considered the submission received. Benefits of finalising the statutory process, depending upon Council's decision on the proposed sale, could result in either the receipt of revenue from the sale of the Land which is no longer required for its original purpose or transfer title to the land to Council in order to protect Council's interests in the land and provide for a possible future sale.

IMPLEMENTATION STRATEGY

Details

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will be provided to Council at a later date, seeking a final resolution on the matter.

Communication

- Council Departments
- Macquarie Local Government Lawyers
- Owners of the adjoining properties
- Statutory Authorities

Timeline

It is expected that a further report in relation to the matter will be provided to Council within two months of this report.

RELATED DOCUMENTS

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Road Management Act 2004*
- Sale of Minor Council Property Assets Policy

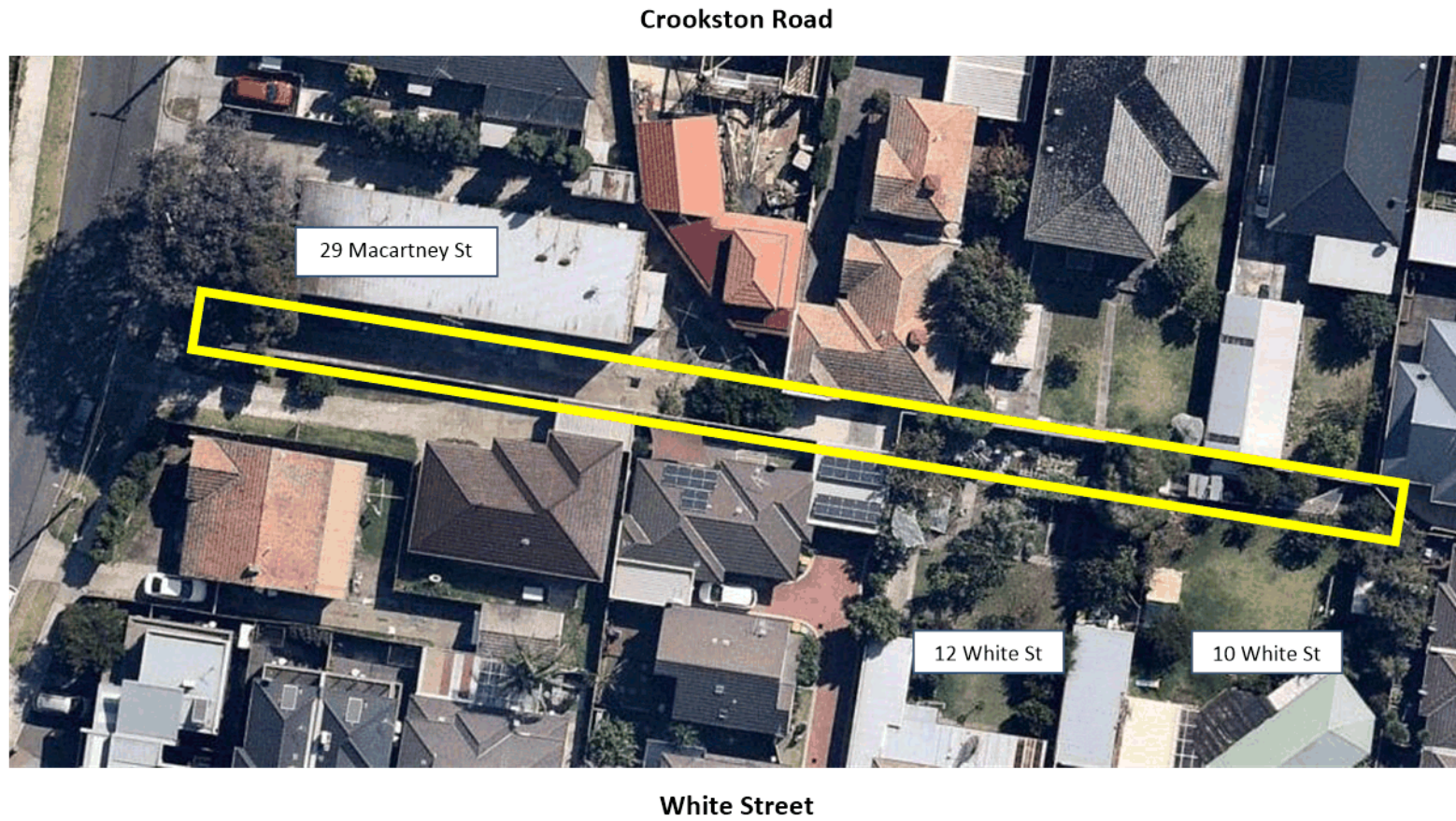
Attachments

- Title Plan TP023768S (**Appendix A**)
- Aerial view - Crookston Road and White Street, Reservoir (**Appendix B**)
- Submission from Mr Tuan Nguyen Minh - 10 & 12 White Street, Reservoir (**Appendix C**)
Confidential - enclosed under separate cover

DISCLOSURE OF INTEREST

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any general or material interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.



6. CLOSE OF MEETING