



14.1 **PROPOSED SALE OF DRAINAGE RESERVE ABUTTING
115,117 AND 119 GLEN HUNTLY ROAD, ELWOOD**

EXECUTIVE MEMBER: **CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND
CORPORATE SERVICES**

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1. PURPOSE

- 1.1 To seek Council's approval to commence the statutory procedures pursuant to the *Local Government Act 1989 (Vic) (Act)* to sell the drainage reserve abutting 115, 117 and 119 Glen Huntly Road, Elwood (**Land**).

2. EXECUTIVE SUMMARY

- 2.1 Council owns a small parcel of Land adjoining the three properties at 115, 117 and 119 Glen Huntly Road, Elwood (**Adjacent Properties**).
- 2.2 The Land is approximately 3.05 metres wide with an area of approximately 40 square metres for which Council is the sole proprietor.
- 2.3 With the exception of a triangular section forming part of the asphalt footpath, the Land is currently illegally occupied by the owner of 119 Glen Huntly Road, Elwood.
- 2.4 Given the small size of the Land, it is neither considered a development site in its own right nor is it considered an ideal location for public open space.
- 2.5 The Land has a drainage easement on title and cannot be built upon.
- 2.6 The owners of the Adjacent Properties are seeking to purchase the Land for their own use.
- 2.7 For sale of any Council land or property, Council is required to undertake the statutory procedures under sections 189 and 223 of the Act which provide an opportunity for interested parties to lodge a submission with Council in respect of the proposal.
- 2.8 As the subject Land is not a road that is guided by Council's Discontinuance and Sale of Roads Policy, there is no clear direction that provides allocation of Council land where there are two or more abutting property owners seeking to purchase the same freehold Council owned land.
- 2.9 In light of the above, Officers recommend Council commences the statutory procedures to sell the Land via a tender process whereby all owners of Adjacent Properties will be invited to participate.

3. RECOMMENDATION

That Council acting under section 189 of the *Local Government Act 1989 (Vic) (Act)*:

- 3.1 Resolves that statutory procedures be commenced to sell the drainage reserve abutting 115, 117 and 119 Glen Huntly Road, Elwood (**Land**) via a closed tender process whereby the owners of the properties located at 115, 117 and 119 Glen Huntly Road, Elwood will be invited to participate;
- 3.2 Directs that public notice of intention to sell the Land be done so at least 4 weeks prior to selling the Land;



- 3.3 Authorises the Chief Executive or delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act in relation to this matter;
- 3.4 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a Council meeting to be determined at a later date; and
- 3.5 Notes that proceeds from the proposed sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio.

4. KEY POINTS/ISSUES

Background

- 4.1 Council owns a small parcel of Land adjoining the Adjacent Properties.
- 4.2 All three owners of the Adjacent Properties are seeking to purchase the Land for their own use.
- 4.3 The Land is approximately 3.05 metres wide with an area of approximately 40 square metres as highlighted in yellow in Attachment 1.
- 4.4 The Land is no longer required as a drainage reserve as the easement registered on title protects the underground drainage infrastructure and other parts of the drainage reserve have previously been sold off to other adjoining property owners.
- 4.5 The Land is shown as lot 1 on Plan of Subdivision 318585V for which Council is the sole proprietor. A copy of the title is contained in Attachment 2.
- 4.6 Given that Council has title to the Land, it cannot be claimed by adverse possession.
- 4.7 The Property Policy allows Council to consider the sale of Council property in response to:
 - changing Council priorities or strategic direction;
 - the opportunity or holding costs associated with the property; and/or
 - changes to Council's operating context, including economic, social and environmental factors.
- 4.8 When considering the sale of Council property, the following guidance applies:
 - Council must undertake a land assessment and determine that the property is not required for retention.
 - Council must undertake appropriate due diligence and research in accordance with policy and legislative requirements.
 - The general principles for the sale of land as provided in the Local Government Best Practice Guidelines should be followed.
 - Any sale of land that is not for full market value or is not via a public process should be explained clearly to the public.
 - Proceeds from all disposals or sales of Council property are to be placed in a strategic property fund and are to be used for the future purchase of property for community benefit.



Current Use

- 4.9 Council records indicate that there are large underground drainage pipe assets under this Land from Tennyson Street to Glen Huntly Road in Elwood. There appears to be no other service authority assets in the Land following Dial Before You Dig investigations.
- 4.10 A site inspection of the Land showed that, with the exception of a triangular section forming part of the asphalt footpath, it is illegally occupied by the property at 119 Glen Huntly Road, Elwood. Its occupation appears to have been so for a considerable period of time, as shown in Attachment 3.
- 4.11 Whilst the property at 115 Glen Huntly Road adjoins the Land, it does not appear to have any access to the drainage reserve or to have used or occupied the drainage reserve in the past.
- 4.12 The property at 117 Glen Huntly Road does not directly adjoin the Land. Whilst it does have a small 3.05 metre wide abuttal to the Land, this is only a result of the owners of this property having previously acquired approximately 75 square metres of the former drainage reserve adjoining their property.

Potential Use

- 4.13 As the Land has a drainage easement on title, it cannot be built on.
- 4.14 Given the small size of the Land, it is not considered a development site in its own right and would need to be consolidated into an accompanying parcel to have development value.
- 4.15 Similarly, the Land is not considered an ideal area for public open space due to its size and location.
- 4.16 Removal of the current encroachment may encourage anti-social behaviours and ongoing maintenance issues which Council would need to address.
- 4.17 Officers hold a valuation as at 15 June 2018, however, an updated valuation will be sought prior to the closing of tenders as contemplated at clause 4.24 of this report.

Legislative Requirements

- 4.18 As the subject Land is not a road that is guided by Council's Discontinuance and Sale of Roads Policy, there is no clear direction that provides allocation of Council land where there are two or more abutting property owners seeking to purchase the same freehold land owned by Council.
- 4.19 For sale of any Council land or property, Council is required to undertake the statutory procedures under sections 189 and 223 of the Act which provide an opportunity for interested parties to lodge a submission to Council in respect of the proposal.
- 4.20 Council must complete the statutory process under sections 189 and 223 of the Act for the proposed sale of the Land and determine whether it resolves to sell the Land.

Method of Sale

- 4.21 Selling via a tender process is considered a fair and transparent process as it will give all the owners of the Adjacent Properties an equal opportunity to bid.



- 4.22 Officers recommend that Council considers selling this drainage reserve via a tender process whereby only the owners of the Adjacent Properties will be invited to participate.
- 4.23 In addition, the proposed disposal of the Land will allow for the Land to be re-purposed and provide additional revenue to Council to support the acquisition and development of the property portfolio.
- 4.24 For the recommended tender process, Council's solicitors will prepare the following documentation:
- tender document, which contains the conditions of the tender and the tender offer form; and
 - contract of sale and vendor's statement.
- 4.25 Offers may then be submitted by the prospective purchasers by the tender closing date.
- 4.26 Following the tender closing date, Council will review all offers submitted and seek any legal advice if required.
- 4.27 Council will consider whether it wishes to accept an offer and then communicate acceptance of the offer.
- 4.28 A further report will be presented in a future meeting for Council to consider the offers received, authorise the Chief Executive or delegate to communicate acceptance of the offer and to sign the contract of sale.
- 4.29 Council will then enter the contract of sale with the successful purchaser. Settlement will consequently be completed in accordance with the contract of sale.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Before proceeding with the sale of the Land, Council must give public notice of the proposal in accordance with sections 189 and 223 of the Act. It provides that a person may, within 28 days of the public notice, lodge a written submission regarding the proposal.
- 5.2 The Asset Management Team agrees that this Land is no longer required and may be sold off to any of the owners of the Adjacent Properties.
- 5.3 Open Space and Recreation Team does not consider there would be any value to Council by retaining this Land for public open space. In addition, given that the Land is not zoned as Public Park and Recreation Zone, its sale or conversion would not constitute a loss of public open space.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 In accordance with section 189 of the Act:
- Except where section 181 or 191 of the Act applies, if a council sells any land it must comply with section 189 of the Act.
 - Before selling any land, Council must ensure that public notice of intention to do so is given at least 4 weeks prior to selling the land; and obtain market valuation of the land not more than 6 months prior to the sale.
 - A person has a right to make a submission under section 223 of the Act on the proposed sale.



- 6.2 Section 181 refers to Council's ability to sell land to recover unpaid rates or charges while section 191 pertains to Council's ability to transfer, exchange or lease of land without consideration to the Crown; or a Minister; or any public body; or trustees appointed under any Government Act to be held on trust for public or municipal purposes; or a public hospital within the meaning of the *Health Services Act 1988* or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.
- 6.3 There is a risk that the offers received under the tender process may be less than the market valuation of the Land. The tender documents will include provisions that enable Officers to negotiate with the tenderer who has submitted the highest offer.
- 6.4 In the event that the negotiated outcome is less than the market value of the Land, Council may either withdraw the Land from sale or proceed with a sale at the negotiated price notwithstanding that it may be below market valuation.

7. FINANCIAL IMPACT

- 7.1 Officers hold a valuation as at 15 June 2018, however, an updated valuation will be sought prior to the closing of tenders in order to comply with the requirements of section 189 of the Act.
- 7.2 Proceeds from the proposed sale will go to Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio.

8. ENVIRONMENTAL IMPACT

- 8.1 The proposal has no detrimental environmental impact.

9. COMMUNITY IMPACT

- 9.1 Council will facilitate the sale of the Land where appropriate consultation has occurred, legislative requirements have been met and it is considered that the sale is in the best interest of the wider community.
- 9.2 The proposed sale will enable the Land to be re-purposed.
- 9.3 Proceeds from the proposed sale will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The proposal aligns with the Strategic Direction 6 Our Commitment to You in the Council Plan 2017-2027 through supporting:
- transparent governance and actively engaged community; and
 - a financially sustainable, high performing, well-governed organisation that puts the community first.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Before proceeding with the proposal, Council must give public notice of the proposal and invite submissions from interested persons allowing at least 28 days to make a submission in accordance with section 223 of the Act. The notice will be published in the Age.



11.1.2 Where a person has made a written submission to Council requesting that he or she be heard in support of the written submission, Council must permit that person to be heard before a meeting of Council or the Committee which has delegated authority to hear those submissions, giving reasonable notice of the day, time and place of the meeting.

11.1.3 After hearing any submissions made, Council must determine whether or not it continues with the proposal to sell the Land via a tender process.

11.2 COMMUNICATION

11.2.1 Council can resolve to commence statutory procedures to sell the Land.

11.2.2 A public notice will give details of the proposal and will invite submissions from interested persons allowing at least 28 days to make a submission.

11.2.3 Any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.

11.2.4 After submissions have been considered, Council may decide to proceed with the proposal or to reject the proposal in its entirety.

11.2.5 If Council decides to proceed with the proposal, a tender process will be carried out by Council's solicitors.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: 20/13/35

ATTACHMENTS

1. Site Plan
2. Title
3. Photos