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AGENDA

Hearing of Submissions meeting to be held
at Darebin Civic Centre,
350 High Street Preston
on Monday, 1 August 2016
at 6.45 pm.

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Agenda

1. MEMBERSHIP

Cr. Vince Fontana (Mayor) (Chairperson)
Cr. Gaetano Greco
Cr. Tim Laurence
Cr. Bo Li
Cr. Trent McCarthy
Cr. Steven Tsitas
Cr. Angela Villella
Cr. Oliver Walsh (Deputy Mayor)
Cr. Julie Williams

2. APOLOGIES

3. DISCLOSURES OF CONFLICTS OF INTEREST

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

Recommendation

That the Minutes of the Hearing of Submissions Committee meeting held on 9 June 2016 be confirmed as a correct record of business transacted.

5. CONSIDERATION OF REPORTS

5.1 PROPOSED DISCONTINUANCE OF ROAD AT REAR OF 15-25A BRUCE STREET AND 10-20 HERBERT STREET, PRESTON

Author: Assets and Properties

Reviewed By: Director Assets and Business Services

Report Background

This report provides a summary of submissions received as part of the statutory process to investigate the proposed discontinuance of a right-of-way (road) at the rear of 15-25A Bruce Street and 10-20 Herbert Street, Preston.

Previous Council Resolution

At its meeting held on 21 March 2016, Council resolved:

“That Council:

- (1) Record its objection to the occupation of the section of road adjacent to 20 Herbert Street, Preston.*
- (2) Declare the section of road adjacent to 20 Herbert Street, Preston to reasonably required for public use and that the road be reopened to public traffic.*
- (3) Officers take action within their existing delegated authorities to effect Council’s resolution that the section of road adjacent to 20 Herbert Street, Preston be reopened to public traffic.”*

At its meeting held on 16 May 2016, Council resolved:

“That Council

- (1) “Having received further information following the decision made at its ordinary meeting of Council held on 21 March 2016 regarding the use of the road beside 20 Herbert Street, Preston, withdraws its objection and directs that the recently cancelled Notice to Comply sent to the occupier of 20 Herbert Street is not to be reissued unless directed by Council.*
- (2) Commence the statutory process to discontinue and sell to the adjoining owners in accordance with Council’s Sale of Minor Council Property Assets Policy, the whole of the road at the rear of 15 - 25 Bruce Street and 10 - 20 Herbert Street and beside 20 Herbert Street, Preston (Road).*
- (3) Will decide whether to discontinue part or all of the Road after considering any written submissions received in relation to the proposal and after hearing from any submitters who have elected to speak to their submissions.”*

Previous Briefing

Councillor Briefing – 22 February 2016

Council Plan Goal/Endorsed Strategy

Goal: Excellent Service – Strategy 5.4 Long term responsible financial planning

Strategy: Property Asset Management Strategy- May 2015

Summary

Public notice of the proposal was given in Preston Leader and Northcote Leader newspapers on the 14 June 2016 and 15 June 2016 respectively. Notification was also given on Council's website. The notice period ended on 14 July 2016.

Two submissions have been received regarding the proposal and the submitters have requested to be heard in support of their submission.

Following consideration of the submissions, it is proposed that Council would make a decision on whether or not to open or discontinue the road and whether or not and when to sell any surplus land from the discontinuance, should it proceed.

Recommendation

THAT Council:

- (1) Officers present a further report to Council appraising the written submissions received and verbal presentations heard by the Committee in respect of the proposed discontinuance and sale of right of way (road) 15 – 25A Bruce Street and 10 - 20 Herbert Street and beside 20 Herbert Street, Preston (Road).
- (2) Thank submitters in writing for addressing the Committee in support of their written and/or verbal submissions.

Introduction

Since 2005, Council has received several requests from adjoining property owners regarding their interest in purchasing the land from the right-of-way/road between 15-25A Bruce Street and rear 10-20 Herbert Street, Preston and adjoining the west of 20 Herbert Street, Preston (Road), shown on site plan (see **Appendix A**) and the aerial photo (see **Appendix B**). Despite numerous attempts to proceed to the next stage of the process, Council has met with an impasse with some property owners wanting the Road reopened and others supporting its discontinuance, yet expressing minimal interest in purchasing the land from the Road.

In February 2012, Local Laws identified that the owner of 25A Bruce Street had been transgressing over rail land in order to access their rear garage as shown in **Appendix C**.

Initial investigations identified that the Road exists on title for the benefit of all adjoining properties. The title confirms the Road should be providing access to the rear of 25A Bruce St, Preston. The Road is occupied and fenced within the boundary of 20 Herbert Street, Preston (Occupier). This occupation of the right-of-way was permitted by the former City of Preston under a temporary closure agreement dating back to 1982.

Metro Trains were contacted to determine if they would consider the sale of rail land at the western side of 25A Bruce Street. This would allow 25A to access their garage. Metro Trains advised that the rail land was not available.

Officers worked with both the owners of 25A Bruce and 20 Herbert to facilitate a suitable outcome that would appease both parties. However, none of the alternatives proposed during consultation were found to be acceptable to both parties.

The property owners at 25A Bruce Street have no vehicle access to the rear of their property.

The Road continues to be enclosed within the boundaries of adjoining property owners, including that part adjoining 20 Herbert Street, Preston.

Council received a report at its meeting of 21 March 2016 which sought to commence the statutory consultation process associated with a proposed road discontinuance. Following consideration of the report, Council resolved to declare the road a public highway and to re-open the Road for vehicle access. Complaints were received from occupying property owners after Notices to Comply were issued which instructed them to vacate the occupied land.

At its Ordinary meeting on 16 May 2016 Council considered an item of urgent business and resolved to 'undo' part of its previous resolution (in relation to cessation of occupation and eviction of the occupiers) and to commence the statutory process to investigate discontinuance and sale of the Road to the adjoining owners. This process, as originally proposed in the report to Council of 21 March 2016, would allow Council to test community sentiment about the proposal prior to taking any formal action (either to close or open the road).

A letter and a copy of the public notice was provided to all thirteen property owners who own land adjoining the Road. Two written submissions were received and both submitters have elected to be heard in support of their submission.

Issues and Discussion

Two submissions have been received:

Submission One – Mr & Mrs Georgiadis

- Submission received on 14 July 2016.
- Mr & Mrs Georgiadis are the owners of 25A Bruce Street, Preston.
- They are seeking to have the Road reopened and reinstated.

Submission Two – Mr Tsagaratos

- Late Submission received on 22 July 2016.
- Mr Tsagaratos is the owner of 20 Herbert Street, Preston.
- He is seeking to have the Road discontinued and purchase the land from the Road if discontinued.

A copy of the submissions has been circulated separately to Councillors for their information.

Hearing of Submissions

Mr & Mrs Georgiadis as well as Mr Tsagaratos have requested to be heard in support of their written submissions and have been advised of the time, date and place of this meeting of Council's Hearing of Submissions Committee.

Consideration of Submissions

In accordance with sections 129 and 223 of the Local Government Act 1989, the Council is required to take into consideration all submissions received in relation to the proposed discontinuance and sale of the Road and after it has made a decision, notify all persons who have made a submission of the decision and the reasons for the decision.

Options for Consideration

There are no options for consideration at this meeting of the Hearing of Submissions Committee.

Financial and Resource Implications

The cost of the placing the public notice has been managed within existing budget allocations.

Risk Management

Hearing of submissions as part of a proposed road discontinuance is in accordance with the statutory process contained within the Local Government Act 1989. As the role of the Hearing of Submissions committee is only to 'hear' submissions, there is no significant risks associated with this report.

A late submission has been accepted from one of the property owners that would be directly affected by a decision by Council either to open or discontinue the road. It is understood that this property owner did not understand the public notice (a copy of which was provided to each adjoining property owner via mail) and that submissions were being requested. The documentation provided to property owners advising of the submissions process was prepared by Council's legal advisers and is compliant with the requirements of the Local Government Act. This correspondence will be reviewed to ensure future use clearly and explicitly states its purpose.

Policy Implications**Economic Development**

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

Environmental Sustainability

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

Human Rights, Equity and Inclusion

There are no factors in this report which impact on human rights, equity and inclusion.

Other

There are no other factors which impact on this report.

Future Actions

- Report to a future meeting of Council

Consultation and Advocacy

Letters were provided to the property owners of 15-25a Bruce Street and 10-20 Herbert Street, Preston.

Related Documents

- Plan showing section of road to be discontinued and sold (**Appendix A**)
- 2016 Aerial photograph of Road adjoining Bruce and Herbert Streets Preston (**Appendix B**)
- 2016 Aerial photograph illustrating track used by 25A Bruce Street, Preston (**Appendix C**)
- Council Minutes – 21 March 2016 and 16 May 2016
- Council's Right-of-Way and Road Closure Policy
- *Local Government Act 1989*
- *Road Management Act 2004*

Disclosure of Interest

Section 80C of the *Local Government Act 1989* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any direct or indirect 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