



**MINUTES OF THE  
HEARING OF SUBMISSIONS  
COMMITTEE MEETING**

**MONDAY 23 APRIL 2012**

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# Table of Contents

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Item Number	Page Number
1. PRESENT .....	1
2. APOLOGIES .....	1
3. DISCLOSURES OF CONFLICTS OF INTEREST .....	1
4. CONFIRMATION OF THE MINUTES OF THE PREVIOUS HEARING OF SUBMISSIONS COMMITTEE MEETING .....	2
5. CONSIDERATION OF REPORTS .....	3
5.1 OBSTRUCTION OF RIGHT OF WAY ADJACENT TO 71 AND 73 CUNNINGHAM STREET, NORTHCOTE .....	3
6. CLOSE OF MEETING .....	8

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**MINUTES OF THE MEETING OF THE HEARING OF SUBMISSIONS  
COMMITTEE OF THE  
DAREBIN CITY COUNCIL HELD AT DAREBIN CIVIC CENTRE,  
350 HIGH ST, PRESTON ON MONDAY 23 APRIL 2012**

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**THE MEETING OPENED AT 7.07 PM**

**1. PRESENT**

Cr. Steven Tsitas (Mayor)  
Cr. Diana Asmar (Deputy Mayor)  
Cr. Stanley Chiang  
Cr. Gaetano Greco  
Cr. Vince Fontana  
Cr. Nick Katsis  
Cr. Tim Laurence  
Cr. Ben Morgan  
Cr. Trent McCarthy

***Council Officers***

Chief Executive Officer – Rasiah Dev  
Director Corporate and Business Services – Vijaya Vaidyanath  
Director City Design and Environment – Daniel Freer  
Manager Assets and Properties – Chris Meulblok  
Council Business Coordinator – Ron Downes  
Senior Property Officer – Lee Dobson

**2. APOLOGIES**

Nil.

**3. DISCLOSURES OF CONFLICTS OF INTEREST**

Nil.

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

**COMMITTEE DECISION**

**MOVED: Cr. D. Asmar**  
**SECONDED: Cr. V. Fontana**

**THAT** the Minutes of the Hearing of Submissions Committee meetings held on 14 June 2011 be confirmed as a correct record of business transacted.

**CARRIED**

## 5. CONSIDERATION OF REPORTS

### 5.1 OBSTRUCTION OF RIGHT OF WAY ADJACENT TO 71 AND 73 CUNNINGHAM STREET, NORTHCOTE

**AUTHOR:** Manager Assets and Properties

**DIRECTOR:** Director Corporate and Business Services

#### **SUMMARY:**

In 2003, Council received a letter from the owner of 76 Westgarth Street, Northcote regarding issues of access and drainage from a laneway between 71 and 73 Cunningham Street, Northcote. While this matter has been addressed in the past, no substantial resolution has been reached and as such, access and drainage issues continue to be experienced.

On 28 November 2011, Council were briefed on issues relating to a laneway between 71 and 73 Cunningham Street Northcote and were advised that officers would proceed with a process similar in nature to that of section 223 under the Local Government Act 1989. This section provides members of the community the opportunity to make a written submission and, if requested, to be heard in support of that submission.

On 1 March 2012, correspondence was provided to all property owners abutting the laneway seeking submissions. A total of seven submissions have been received. Three of the submitters have requested to be heard in support of their submission.

The submitters have been invited to attend this meeting of the Hearing of Submissions Committee.

#### **CONSULTATION:**

Letters to abutting property owners

<b>RECOMMENDATION</b>
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**THAT** Council officers prepare a report for the Council meeting on 2 July 2012 addressing all the written submissions received and verbal presentations heard in respect of the laneway adjacent to 71 and 73 Cunningham Street Northcote.

<b>REPORT</b>
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**INTRODUCTION AND BACKGROUND**

In 2003, Council received a letter from the owner of 76 Westgarth Street, Northcote requesting Council to remove a locked gate that had been erected across the Right-of-Way (ROW) between 71 and 73 Cunningham Street, Northcote. This letter also advised Council that a cobblestone invert which had been used for stormwater runoff had been removed from the laneway and filled in with soil, altering the ground levels and causing flooding in and around the rear garage of his property at 76 Westgarth Street, Northcote.

On 28 November 2011, Council were briefed on issues relating to a laneway between 71 and 73 Cunningham Street Northcote and were advised that officers would proceed with a process similar in nature to that of section 223 under the Local Government Act 1989. This section provides members of the community with an opportunity to make a written submission and, if requested, to be heard in support of that submission.

Letters were sent to properties directly abutting the ROW inviting persons who wished to make a submission in relation to the laneway adjacent to 71 and 73 Cunningham Street Northcote to do so by Friday 30 March 2012 with any person requesting to be heard in support of their written submission to be heard by Council's Hearing of Submissions Committee at 7.15pm on 23 April 2012.

**ISSUES AND DISCUSSION**

A total of seven written submissions have been received.

Copies of all submissions have been circulated separately to members of the Hearing of Submissions Committee for their information.

The following submitters have requested to be heard:

- Ms Lucy Lilburne of Northcote
- Mr Peter Catalano of Northcote
- Mr Peter Dimitropoulos of Northcote

The following submitters did not request to be heard:

- Mr Peter Long and Ms Kate Ellis of Northcote
- Mr Rob Skinner of Northcote
- Mr Igino Bolzan of Fairfield
- Rigby Cooke Lawyers (Executors to the estate of the original subdivider)

## **POLICY IMPLICATIONS**

### **Environmental Sustainability**

Nil

### **Social Inclusion and Diversity**

Provision of a section 223 (Local Government Act 1989) style hearing of submissions for all property owners abutting this ROW enables those people with an interest in the matter an opportunity to make their position on the matter known to Council prior to any decision on the matter being made.

### **Other**

Nil

## **FINANCIAL AND RESOURCE IMPLICATIONS**

Nil at this point.

## **FUTURE ACTIONS**

Following the Hearing of Submissions Committee meeting, a report in relation to all submissions received will be submitted for consideration at the meeting of the Council scheduled for 2 July 2012. The report will include a response to the issues raised in the submissions.

## **DISCLOSURE OF INTERESTS**

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.

## **RELATED DOCUMENTS**

**Appendix A – Locality Plan**

**PRESENTATIONS**

At the invitation of the Mayor, Cr. Tsitas, the following persons spoke in support of their written submissions:

Ms Lucy Lilburne of Northcote

Ms Lilburne spoke to her written submission dated 30 March 2012 and additional advice circulated dated 19 April 2012 she had expressly prepared for the purpose of the meeting.

Points made during her presentation included:

- Certificates of Title for 69, 71, 73 and 75 Cunningham Street provide for carriageway rights over the right-of-way. Other properties do not have these rights expressly written into their titles
- The right-of-way is not constructed
- The right-of-way is a private road (as per previous Council advice)
- There is available evidence that the right-of-way has only been used by 69, 71, 73 and 75 Cunningham Street residents since 1953
- The Westgarth Street properties have not used the right-of-way
- Opening the right-of-way to public use will create serious security and health issues.

Mr Peter Catalano of Northcote

Mr. Catalano spoke to his written submission dated 27 March 2012.

Points made during his presentation included:

- The right-of-way should be regarded as a public road
- His property has had access to the laneway since the mid 1950s, including vehicle access which he has used
- The right-of-way was used to collect nightsoil from adjoining properties
- Issues were raised in relation to the use of the surface of the right-of-way for drainage by Westgarth Street properties and mention was made of a former bluestone invert
- The presence of the sewer vent in the right-of-way means that it is not a private road
- Has a roller door at the back of his property to access the land that has been fenced over by Cunningham Street residents
- Recounted discussions with the Land Tax Office in relation to the right-of-way's status as a road
- Other people had used the right-of-way, not just the Cunningham Street properties
- Stated his legal right to access the right-of-way, even though it is not on the title.

Mr Catalano's daughter also spoke in support and described her use of the laneway as a child.



Son-in-law of Mr Peter Dimitropoulos of Northcote

Mr Dimitropoulos' son-in-law made reference to Mr Dimitropoulos' written submission dated 27 March 2012 and advised that his father-in-law had owned his property since 1945 and that access to the right-of-way has always been in place.

He added that it was Mr Dimitropoulos' intention to install a pedestrian gate at the appropriate time in the future.

Mr Rob Skinner of Northcote.

Mr Skinner spoke to his written submission dated 23 March 2012.

Points made during his presentation included:

- That drainage should not be considered as part of this investigation
- Two legal opinions had been sought in relation to the right-of-way, both of which support that the right-of-way is not a 'road' for the purposes of the Road Management Act and thus adjoining properties have no right of access
- Retaining the 'status quo' situation was warranted given the unique circumstances and legalities involved
- The narrowness of the right-of-way makes it unsuitable as a road for public use
- Retention of the gate at the entrance to the right-of-way is highly desirable to combat public health, rubbish, trespass, even possible fire concerns
- No-one other than Cunningham Street property owners has used the right-of-way in the past
- There have been gates across the entrance to the right-of-way for quite some time.

At the conclusion of each presentation, The Mayor, Cr. Tsitas thanked the presenters for addressing the Committee in support of their written submissions.

**COMMITTEE RECOMMENDATION**

**MOVED:** Cr. D. Asmar  
**SECONDED:** Cr. T. McCarthy

**THAT** Council officers prepare a report for the Council meeting on 2 July 2012 addressing all the written submissions received and verbal presentations heard in respect of the laneway adjacent to 71 and 73 Cunningham Street Northcote.

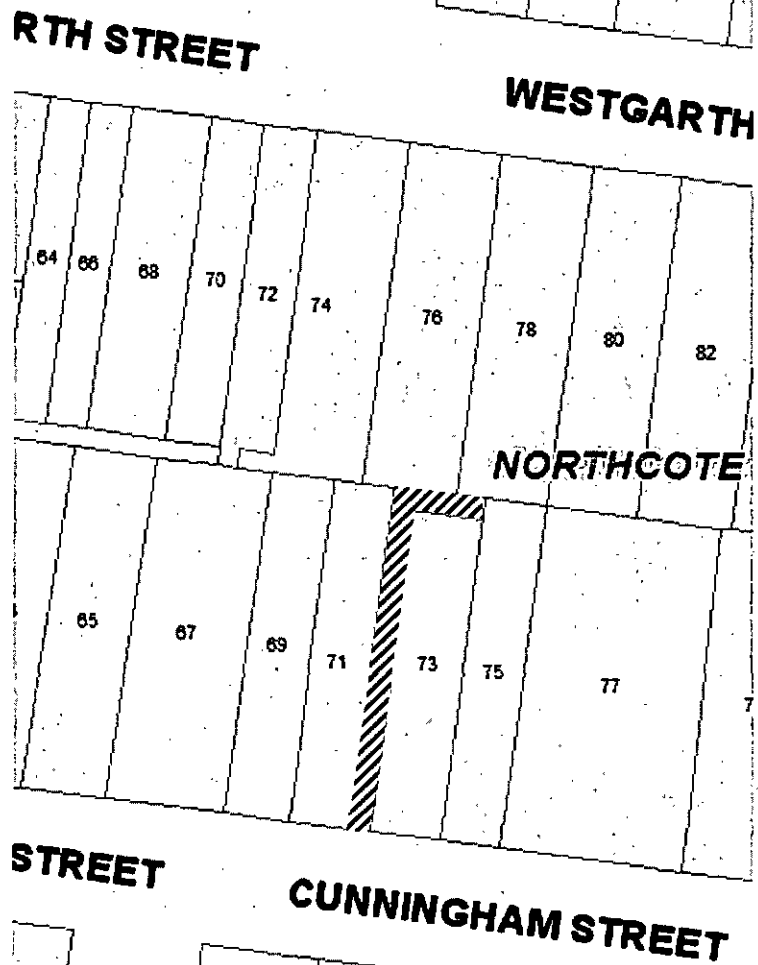
**CARRIED**



Issue Date: Wednesday, 18 April 2012

**Property Address:**

**LANEWAY BETWEEN 71 & 73 CUNNINGHAM STREET  
NORTHCOTE VIC 3070**



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**6. CLOSE OF MEETING**

The meeting closed at 7.50pm