



13.3 PROPOSED SALE OF LAND ABUTTING 115,117 AND 119
GLEN HUNTLY ROAD, ELWOOD

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER,
OPERATIONS AND INFRASTRUCTURE

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR
BRIDGETTE KENNEDY, TEAM LEADER PROPERTY OPERATIONS

1. PURPOSE

- 1.1 To seek Council's approval to sell the land abutting 115, 117 and 119 Glen Huntly Road, Elwood, being the land contained in certificate of title volume 11448 folio 025 (**Land**), for market value via a closed tender process to be conducted by Council's solicitors whereby the owners of 115, 117 and 119 Glen Huntly Road will be invited to participate, pursuant to sections 189 and 223 of the Local Government Act 1989 (Vic) (**Act**).

2. EXECUTIVE SUMMARY

- 2.1 Council owns the subject 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 At its meeting on 1 July 2020, Council resolved to commence the statutory procedures to sell the Land via closed tender process whereby the owners of the Adjacent Properties will be invited to participate and give notice of its intent to sell the Land pursuant to section 223 of the Act.
- 2.10 Due to the COVID pandemic, Officers have had to re-consider the timing of the proposal.
- 2.11 The owners of the Adjacent Properties have recently advised that they are now better placed to participate in the closed tender process if approved by Council.



- 2.12 A Notice of Intent to Sell the Land was published in The Age newspaper on 4 June 2021.
- 2.13 There were no submissions in response to the public notice.
- 2.14 Officers recommend that Council completes the statutory procedures and makes a final decision on the proposal to sell the Land.

3. RECOMMENDATION

That Council having considered that there were no submissions in response to the public notice regarding Council's proposal to sell the land abutting 115, 117 and 119 Glen Huntly Road, Elwood, being the land contained in certificate of title volume 11448 folio 025 (**Land**):

- 3.1 resolves to sell the Land for market value via a closed tender process to be conducted by Council's solicitors whereby the owners of the properties located at 115, 117 and 119 Glen Huntly Road, Elwood will be invited to participate;
- 3.2 notes that the proceeds from the sale of the Land will go into Council's Strategic Property Reserves used to support the acquisition and development of the property portfolio;
- 3.3 directs that the Chief Executive Officer or delegate is authorised to sign all documentation required to complete the sale and transfer of the Land; and
- 3.4 directs that the successful purchaser be required to consolidate the title to the Land with the title to the adjoining property of the successful purchaser within 12 months of the date of the transfer of the Land.

4. KEY POINTS/ISSUES

Background

- 4.1 Council owns the subject 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 Land or to have used or occupied the Land 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.

Legislative Requirements

- 4.17 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.



4.18 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.

4.19 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

4.20 Selling the Land for market value via a closed 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.

4.21 Officers recommend that Council considers selling this Land for market value via a closed tender process to be conducted by Council's solicitors whereby only the owners of the Adjacent Properties will be invited to participate.

4.22 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.

5. CONSULTATION AND STAKEHOLDERS

5.1 In accordance with sections 189 and 223 of the Act, a notice of intention to sell the Land was published in The Age newspaper on 4 June 2021.

5.2 The deadline of submissions was on 2 July 2021.

5.3 No submissions were received in response to the public notice.

5.4 The Asset Management Team has previously agreed that this Land is no longer required and may be sold off to any of the owners of the Adjacent Properties.

5.5 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.



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 In circumstances where the highest offer received by Council is less than its valuation, Council may:
- negotiate with the proponent who submitted the highest offer until the parties agree on a price that is not less than Council's valuation;
 - withdraw the Land from sale; or
 - ask its valuer to reconsider its valuation in light of the offers received.
- 7.3 If Council's valuer considers it appropriate to revise its valuation based on the offers received, Council may decide to sell the Land to the proponent who submitted the highest offer provided that it is not less than the revised valuation.

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 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 **Well Governed Port Phillip** – a leading government authority, where our community and our organisation are in a better place as a result of our collective efforts.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 If Council resolves to sell the Land for market value via a closed tender process, such tender process will be conducted by Council's solicitors.
- 11.1.2 If the Land is sold, the successful purchaser be required to consolidate the title to the Land with the title to the adjoining property of the successful purchaser within 12 months of the date of the transfer of the Land.

11.2 COMMUNICATION

- 11.2.1 The public notification process has provided the community with an opportunity to make submissions in respect of the proposal. Having considered that no submissions were received, Council may now determine whether to sell the Land for market value via a closed tender process.
- 11.2.2 The owners of the Adjacent Properties will be notified of the outcome of the 4 August 2021 Council meeting.



MEETING OF THE PORT PHILLIP CITY COUNCIL 4 AUGUST 2021

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.

ATTACHMENTS

- 1. Site Plan**
- 2. Title**
- 3. Photos**