

STRATEGY AND POLICY REVIEW COMMITTEE
6 APRIL 2009 **GOVERNANCE AND COMPLIANCE**

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| A7 | PROPOSED SALE OF A SECTION OF FORMER DRAINAGE RESERVE NO. R1621 AT THE REAR OF 17 AUSTIN AVE, ELWOOD. |
| LOCATION/ADDRESS: | REAR 17 AUSTIN AVE, ELWOOD |
| EXECUTIVE DIRECTOR: | SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION, SYSTEMS & SUPPORT |
| PREPARED BY: | TOULA KOTSABOUKIS, PROPERTY & VALUATIONS |
| FILE NO.: | 78/11/133A |
| ATTACHMENTS: | SITE PLAN & PHOTOGRAPHS |

1. PURPOSE

The owners of 17 Austin Ave, Elwood, have requested to purchase a section of a former drainage reserve at the rear of the property to them. Council is the owner of the land and a drainage easement protects Council's interests.

It is proposed that Council undertake the procedures to ensure formal public consultation, as set out in sections 189 and 223 of the Local Government Act 1989, before a final decision is made.

2. RECOMMENDATION

That the Strategy and Policy Review Committee recommend that Council resolve as follows:

That Council being of the opinion that –

- the former drainage reserve at the rear of 17 Austin Ave, Elwood as shown on the plan attached to this report is shown as surplus to requirements and therefore, intends to sell the land to the abutting owner by private treaty for a purchase price of \$39,600.00 ;
- notes that the existing drainage easement will remain on title to preserve Council rights for maintenance purposes and that other easements will be created if required by servicing authorities;
- directs that under Sections 189 and 223 of the Local Government Act 1989, a notice of intention to sell be published in the Local Newspaper inviting interested persons to make a submission, and
- Council's Strategy and Policy Review Committee be appointed to hear and consider any submissions received in response to the public notice at an appropriate time and date.

3. BACKGROUND AND CONTEXT

3.1 GENERAL

It is common for Council to consider the sale of drainage reserves which are no longer required. An easement will enable Council's drainage assets to be maintained;

- Improved amenity – where the space becomes a haven for anti-social behaviour or is used to dump rubbish
- Improved security and safety – as access to properties is reduced
- Cost savings – as Council's maintenance responsibility for the land is transferred with the land

In other situations it may become apparent that abutting owners are occupying the drainage reserves or have encroached into the air space. In these circumstances Council can take action to remove the drainage reserve status on title and sell the land to maintain the status quo or to remove obstructions to protect the asset.

3.2 FORMER DRAINAGE RESERVE R1621

An application has been received from the owners of 17 Austin Ave, Elwood to purchase a section of former Drainage Reserve No. R1621 situated at the rear of the property. The land comprises approximately 33 sq m.

The land is enclosed within the back yard of the property at the rear addressed as 129 Glenhuntly Rd, Elwood. The owners of 129 Glenhuntly Rd, Elwood has confirmed in writing that there is no objection to the proposal.

The drainage reserve status was removed on title by the former City of St Kilda. Portions of the former drainage reserve have been previously sold to abutting property owners by the City of St Kilda. The portions abutting 111 & 113 Tennyson St, rear 8 Daley St and rear 14 Daley St, Elwood were sold by Port Phillip City Council in 2006, and the portion at the rear of 19 Austin Ave, Elwood was sold by Port Phillip City Council in 2008.

It appears that the land is not reasonably required but will be created as a drainage easement in Council's favour. The sale of the drainage easement currently titled to Council will assist by establishing order and certainty in respect to future dealings in the property at 17 Austin Avenue and 129 Glenhuntly Rd. At the same time, there is a monetary benefit derived by the community through sale and problems associated with a small public space can be averted.

The purchase price has been determined by Council's valuer. Associated costs are to be borne by the applicant. The applicants have accepted the sale price of the land of \$39,600.00 plus an administration cost of \$2,500.00.

4. CONSULTATION AND STAKEHOLDERS

Council will consult with the community through a "Public Notice" inviting submissions to be published in the local newspaper in accordance with the statutory procedures.

All abutting owners will be advised of the proposal by letter and invited to make a submission.

Service Authorities will be consulted to ascertain any requirements for easements.

5. DISCUSSION

5.1 OPTIONS

Council may sell this small portion of land for the benefit of the parties and the community at large.

If Council decides to refuse the proposal, it would be duty bound to maintain the former drainage reserve and thereby create a small public space that would be inconsistent and difficult to maintain and could lead to amenity and ongoing problems.

5.2 POLICY IMPLICATIONS

This proposal for sale will be undertaken accordance with the powers, functions and statutory process set out in the Local Government Act 1989.

5.3 FINANCE / RESOURCE IMPLICATIONS

Council's costs are to be borne by the applicant.

Income derived from the sale will be transferred to Council's general reserves.

5.4 LEGAL & RISK IMPLICATIONS

By complying with legislation and policy and making reasonable conditions for servicing authorities, there are no legal or risk implications associated with the proposal.

If Council decides to refuse the proposal, it would be duty bound to maintain the former drainage reserve and thereby create a small public space that could lead to amenity and safety problems.

5.5 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

An unlawful property situation can be rectified by Council using its powers for discontinuance and sale for the benefit of the parties and the community at large.

ECONOMIC VIABILITY

Income derived from the sale is considered to be due compensation to the community for the loss of public land.

ENVIRONMENTAL RESPONSIBILITY

Amenity and security/safety benefits may result through avoiding the creation of a small public space.

CULTURAL VITALITY

It is considered that the land is not reasonably required for a public use.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

The following is the sequence of actions if the proposal is ultimately approved.

- The applicant will be required to provide 10% deposit on the purchase price.
- A Public Notice will invite submissions from interested persons within 28 days of the date it is published.
- A report will be prepared for Council's Strategy and Policy Review Committee when the committee will hear and consider any submissions received. Council will make the final decision on the proposal.
- A surveyor will be engaged to prepare a title plan and consolidation plan.
- Lawyers will be engaged to carry out conveyancing, collect the settlement costs and ensure that consolidation is completed.

The above can be accomplished within 10 months.

6.2 COMMUNICATION

Communication will be in accordance with the statutory procedures which invite submissions and ensure that each submitter will;

- Be given an opportunity to be heard in person
- Have their views considered, and
- Be told of Council's decision and the reasons for it

In addition to the statutory procedures, abutting owners will be advised of the proposal by letter and invited to participate in the decision making process.