

Item No:
File No: 16.16.1.5
Date: 18 April 2017
Attachments: A, B, C, D

Meeting: Council

Title: Howie Reserve – Road Closure Update

Responsible Manager: General Manager, Heather Barclay

Author: Property & Contracts Officer, Allison Down

Key Focus Area 3: Transparent and accountable local tier of government that is respected for its forward thinking approaches and cross-Council collaborations.

Type of Report: Information Only

Pursuant to Section 83(5) of the *Local Government Act 1999*, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the *Local Government Act 1999* on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(d) being commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information or that would confer a commercial advantage on a third party and that would, on balance, be contrary to the public interest.

Recommendation

Pursuant to s90(3)(d)

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public except the Council's Chief Executive Officer, Kiki Magro, General Manager, Heather Barclay, Property and Contract Officer, Allison Down and the Protocol, Compliance & Governance Officer, Deb Bria be excluded from attendance at the meeting for the report on Howie Reserve – Road Closure Update.

The Council is satisfied that, pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information that is commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information or that would confer a commercial advantage on a third party and that would, on balance, be contrary to the public interest.

Recommendation

That the Howie Reserve – Road Closure Update report, 18 April 2017, be received and noted.

Recommendation

Pursuant to s.91(7)

That having considered the Agenda Item, Howie Reserve – Road Closure Update in confidence under section 90(2) and (3)(d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report entitled Howie Reserve – Road Closure Update Report, 18 April 2017 relevant to this Agenda Item be retained in confidence (excepting that Council authorises the release of the resolution / minutes) until the matters are resolved and that pursuant to Section 91(9)(c) of the *Local Government Act 1999* the Council delegates to the Chief Executive Officer the review and power to revoke this Order.

and

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the *Local Government Act 1999* Council and re-admit the public.

Summary

This report is provided for the purpose of keeping Council informed of the progress regarding the Howie Reserve road closure project.

Council has recently been advised by Ms Jackson's agent that the resolution of 21 November 2016 is not acceptable. This advice from the agent has followed on after firstly having received advice regarding the outcome of the meeting in November 2016 and then subsequently receiving a copy of the proposed authorisation for their consideration on 29 March 2017.

Background

At its Ordinary meeting on 21 November 2016, Council resolved:

CNC212/16-17

- 1. The Administration proceed to close Portion A (as delineated within the report entitled "Howie Reserve – Road Closure" dated 21 November 2016) and that the boundaries of the land are drawn to ensure that all relevant services are maintained.*
- 2. The Administration exclude closure of Portion B (as delineated within the report entitled "Howie Reserve – Road Closure" dated 21 November 2016) from the road closure process and that the boundaries of the land are drawn to ensure that all relevant services are maintained.*
- 3. The Administration exclude closure of Portion C (as delineated within the report entitled "Howie Reserve – Road Closure" dated 21 November 2016) from the road closure process and that Ms Jackson be offered an authorisation under section 221 of the Local Government Act 1999 (SA) while she remains the registered proprietor and a permanent resident at 6 Victoria Terrace.*

A copy of the November 2016 report is provided as **Attachment A**.

Following the passing of the abovementioned resolution of Council on 21 November 2016, and as it relates to Resolution number 3, the Administration wrote to Mr Edward Jolley who acts on behalf of Ms Jackson, the registered land owner. Advice in the letter to Mr Jolley was to inform Mr Jolley of Council's

resolution and advise that legal documentation would be prepared and provided to him in due course. A copy of the letter to Mr Jolley in November 2016 is attached as **Attachment B**.

Further correspondence was provided to Mr Jolley on 29 March 2017 whereby he was provided with a copy of the authorisation required in order to enact the November 2016 Council decision. A copy of the authorisation is provided as **Attachment C**. In essence, the authorisation would allow Ms Jackson to continue to enjoy the land, which has been encroached upon whilst she remains a permanent resident at 6 Victoria Terrace.

Administration was informed by Mr Jolley on 30 March 2017 that Council's resolution is not acceptable and has been rejected. Mr Jolley has indicated that Ms Jackson prefers to retain the encroachment known as portion C and enter into a land swap arrangement that would see Council receive a smaller portion of land that is known as portion D. This can be seen on the map within the letter to Mr Jolley on 23 November 2016 as **Attachment B**. A copy of the advice from Mr Jolley is attached as **Attachment D**.

In terms of Resolution 1 of the November 2016 decision in regard to this matter, the Administration has engaged land surveyors Mosel Steed to commence the process of closing portion A of the subject land and ensuring that the boundaries of the land are drawn to ensure that all relevant services are maintained.

Next Steps

On the basis of the advice most recently received from Mr Jolley the Administration are now seeking legal advice with a view to engaging Council's legal advisors to write to Mr Jolley to reinforce Council's decision.

Attachment/s

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|--------------|--|
| Attachment A | Howie Reserve – Road Closure Report 21 November 2016 |
| Attachment B | Letter to Mr Edward Jolley 23 November 2016 advising of Council resolution from 21 November 2016 |
| Attachment C | Copy of Authorisation in accordance with S221 of the Local Government Act 1999 |
| Attachment D | Advice from Mr Edward Jolley that the Council resolution of 21 November 2017 is not acceptable |



| | | |
|-----------------------------|--|---|
| Meeting: | Council | Item No: 16.1.1 File No: 14.16.1.5 Date: 21 November 2016 Attachment: A, B, C, D |
| Title: | Howie Reserve – Road Closure | |
| Responsible Manager: | Heather Barclay, General Manager | |
| Author: | James Forde, Manager Property & Contracts & Heather Barclay, General Manager | |
| Key Focus Area 3: | Transparent and accountable local tier of government. | |
| Type of Report: | Decision Required | |

Recommendation

Pursuant to Section 83(5) of the Local Government Act 1999, the Chief Executive Officer indicates that the matter contained in this report may, if the Council so determines, be considered in confidence pursuant to Section 90(2) of the Local Government Act 1999 on the basis that the information contained in the attached report is information of the nature specified in subsections 90(3)(h) of the Act being information relating to legal advice regarding the road closure of a portion of Victoria Terrace known as Howie Reserve.

Recommendation (Public)

Moved:
Seconded:

That pursuant to Section 90(2) of the Local Government Act 1999 Council order that the public be excluded, with the exception of the Chief Executive Officer, Kiki Magro, the General Manager, Heather Barclay and the Protocol, Compliance & Governance Officer, Deb Bria from being present at the meeting on the basis that the matter contained in this report is information of the nature specified in subsections 90(3)(h) of the Act being information relating to legal advice regarding the road closure of a portion of Victoria Terrace known as Howie Reserve.

Recommendation (Confidential)

1. The Administration proceed to close Portion A (as delineated within the report entitled “Howie Reserve – Road Closure” dated 21 November 2016) and that the boundaries of the land are drawn to ensure that all relevant services are maintained.
2. The Administration exclude closure of Portion B (as delineated within the report entitled “Howie Reserve – Road Closure” dated 21 November 2016) from the road closure process and that the boundaries of the land are drawn to ensure that all relevant services are maintained.
3. The Administration exclude closure of Portion C (as delineated within the report entitled “Howie Reserve – Road Closure” dated 21 November 2016) from the road closure process and that Ms Jackson be offered an authorisation under section 221 of the *Local Government Act 1999* (SA) while she remains the registered proprietor of 6 Victoria Terrace.

Recommendation (Public)

Moved:

Seconded:

That the Council, having considered the said information or matter in confidence under Part 3 of Chapter 6 of the Local Government Act 1999, orders, pursuant to Section 91(7) of the Local Government Act 1999, that the report entitled “Howie Reserve – Road Closure” and any other documentation relative to the report to be retained in confidence and minutes relating to this Agenda Item be kept confidential until such time as the matter is resolved excepting that the Council authorises the release of relevant documentation to those parties identified in the substantive resolution relating to the Agenda Item.

Recommendation (Public)

Moved:

Seconded:

That Council resolves to end its confidential deliberations pursuant to Section 90(2) of the Local Government Act 1999 Council and re-admit the public.

Summary



Council has previously resolved to close the road reserve encompassing Howie Reserve (Portion A). The Administration has now obtained a survey in respect of the site. The above picture separates the road into four approximate parts (for reference as it relates to this report).

Portion A represents what is presently Howie Reserve. Portion B represents what is presently Victoria Terrace. Portion C represents what is currently the front garden of the resident and registered proprietor of 6 Victoria Terrace, Ms Patricia Jackson. Portion D represents a portion of Ms Jackson's land running adjacent to the Linear Park pathway.

This report presents options towards the road closure of the land known as Howie Reserve and provides options for a resolution of the land described as Portion C.

Background

During its ongoing review of Council's community land portfolio, the Administration identified that the public reserve known as Howie Reserve was in fact a road. The Administration took legal advice which confirmed that matter. A copy of the advice from Wallmans dated 18 March 2016 is attached to this report and marked "**Attachment A**".

At its ordinary meeting of 18 April 2016, Council subsequently resolved as follows:

Council receives and notes the legal advice from Wallmans Lawyer dated 18th of March 2016 regarding the legal status of the land known as Howie Reserve;

Council instructs Administration to commence the process to close the road known as Howie Reserve (excluding any land currently utilised as a physical road) in order for a legal Title to be created;

The land created as a result of closing Howie Reserve is to be reclassified as Community Land and Administration is to prepare the necessary management plan by the time the road closure takes effect.

A further report was provided to Council at its ordinary meeting in July 2016 which set out the process. A copy of that report is attached to this report and marked "**Attachment B**". The Administration has now engaged a surveyor to assist with the road closure process. A survey has been carried out and a copy of the survey drawings is attached to this report and marked "**Attachment C**". The survey confirms that Ms Jackson's garden encroaches the road (Portion C).

Discussion/Issues for Consideration

Prior to progressing the road closure, it is important to resolve matters as they relate to Portion C. The Administration has met with Ms Jackson's son an authorised agent, Mr Edward Jolly, to discuss the matter and to ascertain her preferred course of action. Ms Jackson's preferred solution is to have Portion C closed and then transferred to her for non-monetary consideration in the form of a land swap involving Portion D.

Options for Consideration

Option 1

- a) Close Portion A.
- b) Do not close Portion B.
- c) Do not close Portion C and:
 - i. do nothing further;
 - ii. grant Ms Jackson an authorisation to alter the road pursuant to section 221 the Local Government Act 1999 (SA) ("the Act") for a period not exceeding 42 years and while she remains the registered proprietor of 6 Victoria Terrace.; or

- iii. reclaim the area.

Option 2

- a) Close Portion A.
- b) Do not close Portion B.
- c) Close Portion C and:
 - i. grant Ms Jackson a lease or licence over the land (being community land) for a period not exceeding 42 years and while she remains the registered proprietor of 6 Victoria Terrace. pursuant to section 202 of the Act; or
 - i. revoke the community land classification in respect of the land and provide Ms Jackson with a long term lease or licence (of say 99 years) and while she remains the registered proprietor of 6 Victoria Terrace. .

Option 3

- 1. Close Portion A.
- 2. Do not close Portion B.
- 3. Close Portion C and:
 - i. dispose of it by direct sale at fair market value to Ms Jackson in accordance with Council's Disposal of Land and Other Assets Policy; or
 - ii. dispose of it by direct sale to Ms Jackson for non-monetary consideration in the form of the acquisition of Portion D from Ms Jackson in accordance with Council's Disposal of Land and Other Assets Policy.

Analysis of Options

Option 1

This option maintains Portion C as a road and proposes three further alternatives. The first of those is to simply do nothing. Administratively, this is the simplest solution and will maintain the status quo.

The second alternative is to grant Ms Jackson an authorisation to alter a road pursuant to section 221 of the Act for a period not exceeding 42 years. This action effectively legitimises her use of Portion C. Such authorisations are usually granted in respect of an application to carry out an alteration to a road. There are numerous activities which constitute an alteration under the Act. The establishment and maintenance of a garden, retaining walls and other structures (as is presently the case with Portion C) is likely to fall within that definition.

The Act states that Council must consider a number of factors when considering whether an authorisation should be granted, including issues relating to interference with the road, obstruction of the road and the safety of the road. If satisfied that an authorisation is appropriate, Council may grant it for a period not exceeding 42 years with a further right of renewal for 42 years.

Under this scenario it would be recommended that Ms Jackson only be offered an authorisation while she remains the registered proprietor of 6 Victoria Terrace.

The third alternative is reclaim Portion C. This will involve removing Ms Jackson's garden and reclaiming the land as a Council owned road. This is the most severe option and is likely to meet with resistance.

Option 2

This option closes Portion C and grants Ms Jackson a lease or licence over the resulting parcel of land. If the land is declassified as community land at the time of the closure, a lease or licence can be granted to Ms Jackson at Council's discretion. If the land remains community land, it will need to be incorporated into a community land management plan before a lease or licence can be granted. Any such lease or licence will also be subject to community consultation if it is to exceed 5 years.

Option 3

This option closes Portion C and then sells it to Ms Jackson for either market value or in consideration for Portion D.

A copy of Council's Disposal of Land and Assets Policy is attached to this report and marked "**Attachment D**". The policy states at paragraph 6.5.3 that Council may (having regard to the Factors Relevant to Disposal or Sale set out in paragraph 5) sell land to an adjoining owner of land by direct negotiation.

Paragraph 6.8 states that any sale by direct negotiation must be the subject of two independent valuations no later than six months before the sale. Paragraph 6.9 goes on to state that Council must endeavour to sell the land at or above market value unless there are reasons to sell at a lower price that align with Council's strategic objectives.

On that basis, Council may sell Portion C to Ms Jackson at market value or in consideration for Portion D. It is also possible to have any agreement regarding the sale of Portion C annexed to the road process application. This will mean that Portion C will vest in Ms Jackson as registered proprietor upon the Gazettal of the road closure by the Land Titles Office.

Legal Issues

Ms Jackson has indicated a preparedness to dispute the matter if her preferred option is not adopted by Council. There are two ways in which Ms Jackson could proceed in those circumstances.

Firstly, she may object to the road closure. As elected members are aware, a road closure application must go before the Surveyor-General at the Land Titles Office. The process also requires public consultation and parties are permitted to object to the road closure.

The Administration has spoken with a representative of the Surveyor-General at the Land Titles Office. They have advised that from a legal perspective, any application to close the road would be relatively straightforward. If objections are made and cannot be resolved, however, the application must be referred to the Minister for consideration in light of a recommendation from the Surveyor-General.

In respect of any objection that might be raised by Ms Jackson, it is likely that she would have difficulty maintaining it. This is because she does not own Portion C and will require some indulgence from Council in order to continue using it, irrespective of whether it is closed as a road.

On that basis, there are reasonable prospects of the Surveyor-General recommending to the Minister that the road be closed, despite any outstanding objection from Ms Jackson. There is of course no certainty in that regard (or in respect of other potential objectors) and the Surveyor-General and / or the Minister may take a different view.

The other option for Ms Jackson is to issue proceedings seeking equitable relief. This could take the form of an order that she be paid compensation for the diminution in value of her land or an order that Portion C be transferred to her.

The difficulty with the first proposition is that there has been no diminution in the value of the land. Ms Jackson has never owned it and the presumption that it was hers appears to simply be a mistake. If she can adduce evidence that she was misled or deceived in some way by Council, then such a claim may have merit. A preliminary review of Council's records, however, suggests that there is no such evidence. For instance, the section 7 statement relating to the transfer of the property to Ms Jackson in 2000 does not raise any potential issues with the boundary.

The second proposition that the boundaries be redrawn will also be difficult to maintain in the absence of evidence that she was misled or deceived by Council. Depending upon how the matter develops, further legal advice may be necessary.

Financial Implications

The financial implications will differ depending upon which option Council elects. They will only prove significant if Ms Jackson elects to resist Council's course of action and legal advice and / or representation is required.

Community Implications

The community may have expectations regarding how Council proceed in the circumstances. Ultimately it is expected that Portion C will provide access for walking and cycling into and from the Town Centre.

Governance Implications

The governance implications are not prohibitive for any course of action.

Preferred Option & Reasoning

The Administration recommends that Council adopt Option 1 (ii) incorporating an authorisation approach. This maintains the status quo and allows Ms Jackson to enjoy the land as long as she is the registered proprietor.

Attachments

- Attachment A – Wallmans advice dated 18 April 2016
- Attachment B – Council report July 2016 (in confidence)
- Attachment C – Survey
- Attachment D – Disposal of Land & Other Assets Policy



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Our Ref: JWM:KJH:160999

Your Ref:

18 March 2016

Mr James Forde
Property and contracts manager
Corporation of the Town of Walkerville
PO Box 55
WALKERVILLE SA 5081

Via Email:

Dear James

MARY P HARRIS RESERVE AND HOWIE RESERVE

I refer to your email of 10 March 2006 and provide advice on the issues raised in respect to Howie Reserve.

BACKGROUND

Council are in the process of redeveloping Mary P Harris Reserve and Howie Reserve at the top of Walkerville Terrace.

This is a major development for Council and involves significant Government grants to assist with the project.

The current stage is that of a conceptual master plan. Community consultation has occurred in respect of the master plan.

Council's Planning Department have advised that Council is currently tendering for the design and construction of each stage separately.

We understand that the design was also put to community consultation and amended accordingly and that you understand that separate consultation is proposed to occur at each stage.

While reviewing Community Land Management Plans, Council became aware that there was no Certificate of Title data for Howie Reserve on its records.

From this Council has formed a view that Howie Reserve may in fact be a road and not a reserve.

Council now seeks clarification on the status of this land and related issues.

We have been instructed to carry out necessary investigations and provide technical and strategic advice regarding:

1. whether Howie reserve is in fact a road;

-
2. if the answer is yes, what are the implications for Council (if any), in respect of the development?
 3. advice as to the options available for Council?
 4. if Council ultimately needs to close the road, what are the consultation requirements given that Council has already been out to consultation on the master plan stage 1 design?
 5. does Council need to close the road to create a reserve and if so, should it consider seeking to exclude the reserve from classification as community land to ensure flexibility with its future use?

SHORT ANSWER

1. Howie Reserve is road.
2. The development as proposed can proceed without closing the road.
3. Closing the road would more accurately reflect the proposed use and is advisable as it will mean that future management of the land will be easier for Council. It will not need to treat one part of the area as a road and the other areas as community land (or operational land).
4. Public consultation will be required as part of the roads opening and closing process despite the fact that consultation has been carried out on the master plan and stage 1 design.
5. Excluding the reserve from classification as community land will ensure flexibility with its future use particularly if future redevelopment or disposal is an option. This is a commercial decision for Council. In the circumstances it would not seem to us to be a piece of land that would possibly be the subject of a disposal or development opportunity in the future in which case exclusion may not be worth doing.

ADVICE

1. Whether Howie reserve is in fact a road.

We have attended at the Land Titles Office and obtained original plans which we will forward to you separately. The plans confirm that Howie Reserve is in fact a public road. It is the unmade being the unmade portion of what was supposed to be part of Victoria Terrace.

We also confirm that it does not have a certificate of title.

2. What are the implications for Council (if any), in respect of the development?

It is our understanding that the development proposal over Howie Reserve includes new landscaping, furniture, lighting, sculptural elements, perhaps some bollards, trees and seating. It may even be that some of the deck access ramp area encroaches onto Howie Reserve. This remains to be seen.

The map would indicate that Area 2, being the pedestrian connection, shared street and plaza, also appears to encroach onto Howie Reserve.

Area 4, the Viewing Deck and River Access, also may encroach onto this area.

In any event, the development is largely an open community development designed to connect reserves and beautify the area generally and to make it more user friendly and inviting for the public and the community. This will improve what is currently an area that is underutilised.

The proposal does not include occupancy arrangements to third parties whether by lease, licence or other.

Therefore the development as proposed could proceed without changing the status of the land and leaving it as unmade public road.

If my understanding is incorrect and the development over Howie Reserve is something materially different from what has been discussed here, please advise as this may change the advice.

Implications if Council leaves Howie Reserve as unmade public road

There is no legal requirement to close the road.

Should it remain a road, Council needs to ensure that it is treated as a road. This will mean compliance at all times with Chapter 11 Part 2 of the **Local Government Act 1999 (SA) ('LG Act')** dealing with roads as opposed to Chapter 11 Part 1 dealing with Local Government land (community land or operational land).

Use of the road by third parties will require compliance with Section 221 and an Authorisation, and where any alterations are made to the road or if used for a business purpose, e.g. an Ice Cream van, then a Section 222 Permit will be required. In some circumstances, if for example a cafe was to be built, ultimately a Section 221 and 222 would be required.

One of the difficulties with this will be that the road area will not be easily distinguishable at ground level and therefore difficult for Council staff to know when a portion of the land is the road or not.

If there were an event held at this location the Council could find itself requiring a mix of licences (short term hire agreements) over the community land and road permits and authorisations on the road portion.

In our view, it would be best that Council changes the status of the land for compliance/governance reasons and to ensure that it accurately reflects what Council intends to use it for.

3. Options for changing the status of land

The only option available if Council decides not to leave it as a public road is to close the road using the **Roads (Opening and Closing) Act 1991 (SA) ('Roads Act')**.

Closing the road is not a particularly difficult process and the following is a summary of what is required. See also the attached flowchart, provided for your reference.

3.1 Council will be required to make a 'road process order' in respect of the land in accordance with the requirements set out in Part 3, Divisions 1 and 2 of the

Roads Act. This includes certain public notice requirements, set out in sections 10, 14 and 19 of the **Roads Act**.

- 3.2 The road process order and associated documents are then reviewed by the Surveyor-General and the Minister, who can confirm or decline to confirm the order. The Surveyor-General then publishes a notice of this order in the Gazette.
- 3.3 The road closure takes effect at this stage, with the land vesting in council in fee simple and reverting to the status of community land under the **LG Act**. The Minister can issue a closed road certificate of title if required at this stage.

4. Road closure consultation requirements

Importantly for the purposes of this advice, if Council decides to go down the path of road closure you will need to consider the consultation and notice requirements under the **Roads Act**. While I note that you have already been at consultation on the master plan and stage 1 design and intend to do so again on the other stages of the development proposal, I confirm that this does not impact on your ability to avoid public consultation for the purposes of the **Roads Act**.

Given the consultation and notice requirements under the **Roads Act** are fairly similar to what Council has already done with the redevelopment project, this should not be too onerous. For instance, Council can deposit the already prepared plan of the land and details of affected persons with the Surveyor-General, as required under the Act.

Council will, however, have to go through some additional processes including publishing a notice of the proposed road closure in the Gazette and holding another meeting to consider objections regarding the closing of the road – given that the road issue may not have been specifically noted in the original plans put out to community consultation.

The attached flowchart outlines the public consultation and notice requirements under the **Roads Act**.

5. Community Land Classification

When closing a road, Council is provided with a unique opportunity as part of the process to resolve to exclude the land from community land classification at the time it closes the road. I also note sub-section 201(2)(b) of the LG Act which allows Council to dispose of land that forms a road or part of a road after the closure of the road under the **Roads Act**.

The benefit of the land not being community land once it is vested in Council in fee simple, simply allows Council the slightly broader discretion under the **LG Act** to sell or otherwise dispose of that interest in land without having to go down the community land revocation process.

It also means that Council does not need to publicly consult in the event it intends to alienate (via lease or licence) the land at any point in time and it is not limited to a maximum 21 year lease (note that this is about to be 21 + 21). I confirm also that Council will not require a community land management plan for this land either.

While there are benefits in excluding land from community land classification, given what the proposed area is used for, there would seem to be little benefit in this piece of land being excluded from community land classification. The reality is it would be unlikely that a piece of land such as this would ever be subject of sale or long term lease. However, this is also a commercial decision for Council.

In short, the answer is yes – if it were to be excluded from community land classification, there are some advantages but the reality is it would be unlikely that a piece of land such as this would ever be subject of sale or long term lease.

Yours faithfully
WALLMANS LAWYERS



JAMES MCEWEN

Partner

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Email: james.mcewen@wallmans.com.au

Enc

¹ Flowchart

ROADS CLOSING PROCESS & PUBLIC NOTICE REQUIREMENTS

Under *Roads (Opening and Closing) Act 1991 (SA)* and the *Roads (Opening and Closing) Regulations 1991 (SA)*

PRELIMINARY PLAN AND STATEMENT (Section 9)

- Council must prepare:
 - a preliminary plan of the land in the approved form; and
 - a statement in the approved form containing the names and addresses of those persons affected by the road closure who can be identified by reasonable enquiry, and such information in relation to the land as is required by the Surveyor-General under section 20.
- Council must deposit these documents with the Surveyor-General with the prescribed fee.



PUBLIC NOTICE (Section 10, Regulations 6 and 7)

- Publish a notice in the Gazette and in a newspaper circulating generally in the area of the proposed road closure which includes the following details:
 - describe the nature of the proposal;
 - use a diagram and/or written description to specify the land the subject of the road closure;
 - the address of the office of the Council and the times at which the preliminary plan and statement can be examined by the public and indicate that it can also be inspected at the Surveyor General's office during office hours;
 - the requirements for a person who wishes to lodge a objection (i.e. within 28 days, in writing, full name and address of person making objection, reason for objection, whether the objector wishes to make submissions at a meeting held by Council, and the address for lodgement); and
 - state that an adjoining land owner or other person substantially affected by the closure can apply for an easement over any part of the land subject to closure in accordance with the Regulations and section 13 of the Act.



MEETING TO CONSIDER OBJECTIONS AND APPLICATIONS (Section 14)

- Council must notify in writing any person who has made an objection of the time and place at which the Council will meet to consider all objections and applications. A person may make submissions at this meeting.
- Hold a Council meeting to consider the closure order.

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As soon as practicable following expiry of 28 day notice and objection period

MAKE THE ROAD CLOSING ORDER (Sections 15, 16, 17 and 18)

- Council must first have regard to:
 - any objections made;
 - any considerations under the *Development Act 1993 (SA)*; whether the land the subject of the proposed road opening is reasonably required as a road for public use in view of the present and future needs of the area;
 - alternative uses of the land that would benefit the public; and
 - any other relevant matter.
- Council must then make the road process order.

If Council intends to later exclude the road load from classification as community land, it must resolve to do this before or at the time of making the road process order.

In addition to the road closure order, Council must make one of the orders specified in Section 17 (e.g. if land is to be retained by council for some purpose) and, if applicable, an order specified in Section 18 (allows for granting of an easement).



NOTICE OF ORDER (Section 19)

- Council must give notice in writing of the order to any person who made an objection or application.
- Council must deliver to the Surveyor-General a copy of the minutes of all meetings held in relation to the proposed road process, certified by the CEO.



NOTICE OF DISCONTINUANCE (Section 15(3))

- Notice must be given in writing of the decision not to make the road opening order to:
 - the Surveyor General
 - any person who made an objection or application.



DEPOSIT OF DOCUMENTS (Section 20)

- Council must deposit with the Surveyor General:
 - two copies of the order
 - survey plans
 - a copy of any agreement for transfer or exchange of the land on which is denoted all stamp duty payable
 - the prescribed fee.
- If these requirements are not complied with within the time period, the road order will lapse.



CONFIRMATION OF THE ORDER (Section 24)

- The Surveyor-General makes a recommendation with respect to the order to the Minister (section 23)
- The Minister then confirms the order (or declines to confirm)
- The Surveyor-General publishes a notice in the Gazette, upon which the road closure takes effect and the land vests in Council as community land



Meeting: Council

Title: Howie Reserve Status Report

Responsible Manager: Chief Executive Officer, Kiki Magro

Author: General Manager, Heather Barclay

Type of Report: **Information Only**

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|--------------------|
| Item No: 14.3.5 |
| File No: 3.65.1.1 |
| Date: 18 July 2016 |
| Attachment: Nil |

Recommendation

That Council receives and notes the Howie Reserve Status Report, July 2016.

Summary

Following Council's resolution regarding this matter in April 2016, Council requested an up-date (in June 2016) regarding progress in relation to its decision to close a portion of Victoria Terrace, known as 'Howie Reserve'.

This information report provides advice on the steps required towards closing the road (portion thereof), and the processes currently underway towards that end.

Background

In April 2016, Council was provided advice regarding the status of the land known as Howie Reserve.

Specifically, and as a result of investigation associated with its review of its Community Land Management Plans, Council was informed that Howie Reserve is a road reserve (part of the Victoria Terrace Road Reserve).

Council resolved the following in April 2016;

CNC386/15-16

"That Council receives and notes the legal advice from Wallmans Lawyer dated 18th of March 2016 regarding the legal status of the land known as Howie Reserve;

Council instructs Administration to commence the process to close the road known as Howie Reserve (excluding any land currently utilised as a physical road) in order for a legal Title to be created;

The land created as a result of closing Howie Reserve is to be reclassified as Community Land and Administration is to prepare the necessary management plan by the time the road closure takes effect".

The process towards closing a portion of the road (under the Roads Opening and Closing Act) and establishing that portion as community land (under the LGAct), will not be limited to the following;

- Preparing a preliminary plan of the said portion to be closed in the form prescribed by the Surveyor General
- Preparing a statement in the approved form containing the names and addresses of persons whom may be affected by the road closure
- Depositing the (above) documents to the Surveyor General
- Publishing a notice in the Gazette and newspaper circulating generally in the area of the proposed road closure, including details of the nature of the proposal, a description of the land, the place where the proposal can be viewed, the conditions of and times submissions can be received and any rights for applications for easements for persons directly affected by the proposal
- Holding a Council Meeting to consider any objections and applications in relation to the proposal
- Council making a Road Process Order following consideration of objections and applications
- Providing notice to persons whom may have objected to the proposal of the Road Process Order
- Lodging / Depositing the Road Process Order and relevant documentation with the Surveyor General for consideration and approval (via the Minister).

Council should note that unless Council it specifically resolves as part of the *Road Closing Process* to exclude any portion of land to be established as an allotment from Community Land, the land will automatically be vested as Community Land.

Notwithstanding the above, the first and next steps towards the same are to;

| | | |
|----|---|--|
| 1. | <p>Undertake a licenced and engineering survey and title search to officially establish the extent and boundaries of the road and any existing rights of way, easements or encroachments and service authority requirements.</p> <p>Such work will determine whether Council needs to negotiate any outcomes with adjoining property owners/service providers prior to considering the portion of road to be closed</p> | <p>This work is underway and expected to be completed in July 2016.</p> <p>Adjacent property owners have been advised that a survey is being undertaken in preparation for the proposed partial road closure</p> |
| 2. | <p>Formally determine the extent of road to be closed (by Council resolution)</p> <p>Following 1. above, a plan proposing the actual portion of road to be closed will be prepared for Council consideration.</p> | <p>Proposed August 2016 Council (subject to 1. above).</p> |
| 3. | <p>Following 1 and 2 above, the formal road closure process can be commenced</p> | <p>Expected September/October 2016</p> |





CONTINUES SHEET 2

IDENTIFICATION & SITE SURVEY
 VICTORIA TERRACE
 ADJACENT TO
 ALLOT 11 IN F138014
 WALKERVILLE

DATE: 22/06/18
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 PROJECT NO: [Number]

FIELD WORK COMPLETED 22/06/18
 [Signature]

INFORMATION SHOWN ON THIS PLAN IS FROM AERIAL PHOTOGRAPHS AND FIELD SURVEY. THE CLIENT ACCEPTS THAT THE INFORMATION SHOWN ON THIS PLAN IS FROM AERIAL PHOTOGRAPHS AND FIELD SURVEY. THE CLIENT ACCEPTS THAT THE INFORMATION SHOWN ON THIS PLAN IS FROM AERIAL PHOTOGRAPHS AND FIELD SURVEY. THE CLIENT ACCEPTS THAT THE INFORMATION SHOWN ON THIS PLAN IS FROM AERIAL PHOTOGRAPHS AND FIELD SURVEY.

FEES
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POST
 X NATURAL SURFACE
 L
 C
 G
 C
 M
 D

SCALE
 ORIGINAL SCALE: 1:100
 PROJECT SCALE: 1:500
 DATE: 22/06/18
 CLIENT: TOWN OF WALKERVILLE

MOORE SURVEYING
 23 BROADWAY, WALKERVILLE, SA 5037
 PH: 08 8532 2222
 FAX: 08 8532 2222
 EMAIL: info@mooresurveying.com.au
 WEBSITE: www.mooresurveying.com.au



[CONTINUES SHEET 3]

IDENTIFICATION & SITE SURVEY
 VICTORIA TERRACE
 ADJACENT TO
 ALLOT 11 IN F138014
 WALKERVILLE

DATE: 22/01/18
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

1:50 SCALE
 PROJECT CODE: [Code]
 LOCATION: [Location]

INFORMATION SHOWN ONLY IS FOR INFORMATION ONLY. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE CLIENT IS ADVISED THAT THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION.

BILL
 INFORMATION SHOWN ONLY IS FOR INFORMATION ONLY
 COMPLETE SURVEY DRAWING REF: [Ref]
 DATED: 22/01/18

SCALE
 0 2 4 6 8 10 METRES

LEGEND
 X NATURAL SURFACE
 --- BOUNDARY
 --- EDGE OF CONCRETE
 --- CONCRETE BORDER
 --- TOP OF BANK
 --- FORTING
 --- SLEEPER RETAINING WALL

MOORE STEAD
 28 Thompsons Way
 Walkerville SA 5097
 Phone: 08 8352 1111
 Fax: 08 8352 1112
 Email: info@moorestead.com.au
 Website: www.moorestead.com.au



| | | | |
|--|--|---|--|
| | | IDENTIFICATION & SITE SURVEY VICTORIA TERRACE ADJACENT TO ALLOT 11 IN F138014 WALKERVILLE | |
| 20 Spence Street Walkerville SA 5007 Tel: 08 8362 9888 Fax: 08 8362 9889 Email: info@marsfield.com.au Website: www.marsfield.com.au | | 1:0 SCALE DATE: 11/07/11 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name] | |
| COORDINATE DATUM: PLANE HEIGHT DATUM: AUSTRALIAN SURVEY DATE: 22/11/10 CLIENT: TOWN OF WALKERVILLE | | THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS NOT BEEN ADVISED OF ANY OBSTACLES OR HAZARDS THAT MAY AFFECT THE SURVEY. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS NOT BEEN ADVISED OF ANY OBSTACLES OR HAZARDS THAT MAY AFFECT THE SURVEY. | |
| SCALE: 1:1000 METRES 0 2 4 6 8 10 | | FENCE BOUNDARY LOGS OF CONCRETE CONCRETE BOUNDARY TOP OF BANK CONCRETE BOUNDARY SLEEPER RETAINING WALL | |
| WELL INFORMATION SHOWN ARE TO BE EXCLUDED COMPLETE SURVEY'S DRAWING REF: 4037-0 DATED: 04/11/10 | | 1:0 SCALE DATE: 11/07/11 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name] | |

| | |
|--|---|
|  <p style="text-align: center;">Disposal Of Land And Assets Policy</p> | |
| Approved by | Council |
| First Approved | 16 November 2015 (CNC175/15-16) |
| Review Frequency | Bi-annually (and following general Council elections) |
| Last reviewed date: | N/A |
| Next review date: | 16 November 2017 |
| Document Number | POL201512048 |
| Responsibility: | Property & Contracts Manager |
| Related Policies: | <ol style="list-style-type: none"> 1. Code of Conduct for Council Members & Council Employees 2. Credit Card Procedures 3. Purchase Order Guidelines 4. Financial Internal Controls Policy 5. Public Policy Consultation & Communications 6. Budget Management Policy 7. Fraud and Corruption Prevention Policy 8. Procurement Policy 9. Delegated Financial Process |

1. INTRODUCTION

- 1.1. This Policy for Disposal of Land and Assets (“**the Policy**”) has been prepared by the Corporation of the Town of Walkerville (“**the Council**”) in accordance and compliance with the provisions of section 49 of the *Local Government Act 1999* (SA) (“**the Act**”).
- 1.2. The purpose of the Policy is to provide information and guidance to elected members of Council (“**Elected Members**”), employees of Council (“**Employees**”) and rate payers (“**the Public**”) in respect of the disposal of Land and Assets by Council.

- 1.3. This Policy is to be read in conjunction with other policies prepared by Council from time to time.
- 1.4. This Policy does not relate to:
 - 1.4.1. the procurement activities of Council;
 - 1.4.2. Land sold by Council as a result of the non-payment of rates; or
 - 1.4.3. the disposal of Land or Assets which are not owned by Council e.g. abandoned vehicles.

2. LEGISLATIVE FRAMEWORK

- 2.1. The manner in which Council conducts itself in respect of the disposal of Land and Assets is governed by section 49 of the Act.
- 2.2. Section 49(1) of the Act requires Council, among other things, to prepare and adopt policies in respect of contracts and tenders including policies relating to the sale or disposal of land or other assets.
- 2.3. Section 49(a1) of the Act requires Council, among other things, to develop and maintain procurement policies, practices and procedures directed towards:
 - 2.3.1. obtaining value in the expenditure of public money;
 - 2.3.2. providing for ethical and fair treatment of participants; and
 - 2.3.3. ensuring probity, accountability and transparency in procurement operations.
- 2.4. Section 49(2) of the Act requires Council to, among other things:
 - 2.4.1. identify circumstances where Council will call for tenders for sale or disposal of land or other assets;
 - 2.4.2. provide for the recording of reasons for entering into contracts other than those resulting from a tender process; and
 - 2.4.3. be consistent with any requirement prescribed by the *Local Government (General) Regulations 2013 (SA)* (“**the Regulations**”).

3. DEFINITIONS

- 3.1. In this Policy, unless otherwise stated, the following definitions apply:
 - 3.1.1. **Asset** means any good, chattel, object or physical item owned by Council that has been or may be at any time treated pursuant to

Australian Accounting Standards as an 'asset'. For the sake of clarity, the definition excludes financial investments or finance related activities, trees or Land.

- 3.1.2. **Land** means any community land, vacant land, operational land, road reserves, any legal, proprietary or equitable interest in land and includes any buildings (community or operational) or improvements upon such land.

4. POLICY PRINCIPLES

- 4.1. Council will have regard to the following principles in the sale or disposal of Land or Assets:
- 4.1.1. demonstrated probity, accountability, responsibility and transparency to Elected Members and the Public;
 - 4.1.2. fairness and equitable treatment of all parties involved in the procurement processes of Council;
 - 4.1.3. the monitoring and recording of all sale and disposal activities;
 - 4.1.4. achieving the best possible outcome for Council;
 - 4.1.5. obtaining value for money through fair, competitive and non-discriminatory processes;
 - 4.1.6. promoting the use of Council's resources in an efficient, effective and ethical manner;
 - 4.1.7. advancing Council's economic, social and environmental policies and objectives including any corporate strategic plan in force from time to time;
 - 4.1.8. providing a reasonable opportunity for competitive local businesses to contract with Council;
 - 4.1.9. demonstrated sensitivity to the current and future needs of a diverse community;
 - 4.1.10. appropriate management of risk; and
 - 4.1.11. compliance with the Act and other legislative requirements.

5. FACTORS RELEVANT TO SALE OR DISPOSAL

- 5.1. Council will consider a variety of factors when considering whether to sell or dispose of Land or Assets including, but not limited to:

- 5.1.1. the usefulness of the Land or Asset;
- 5.1.2. the current market value of the Land or Asset;
- 5.1.3. the annual cost of maintenance;
- 5.1.4. any alternative future use of the Land or Asset;
- 5.1.5. any duplication of the Land or Asset or the utility provided by the Land or Asset;
- 5.1.6. any impact the disposal of the Land or Asset may have on the community;
- 5.1.7. any cultural or historical significance of the Land or Asset;
- 5.1.8. the positive and negative impacts the disposal of the Land or Asset may have on the operations of Council;
- 5.1.9. the long term plans and strategic direction of Council;
- 5.1.10. the remaining useful life of the Land or Asset;
- 5.1.11. a benefit and risk analysis of each proposed sale or disposal;
- 5.1.12. the content of any community land management plan;
- 5.1.13. other relevant Council policies or procedures;
- 5.1.14. the principles of economic contribution including any relevant policy and procedure adopted by the Office of the Industry Advocate and in force from time to time; and
- 5.1.15. any other factor deemed relevant by Council in the circumstances.

6. SALE OR DISPOSAL OF LAND

- 6.1. Having regard to the Factors Relevant to Sale or Disposal, Council may resolve to sell or dispose of Land.
- 6.2. Where the Land forms or formed a road or part of a road, Council must ensure that the Land is closed in accordance with the provisions of the *Roads Opening and Close Act 1991 (SA)* prior to its sale or disposal.
- 6.3. Where Land is classified as community Land, Council must:

- 6.3.1. undertake public consultation in accordance with the Act and Council's Public Consultation Policy;
 - 6.3.2. ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its sale or disposal; and
 - 6.3.3. comply with all other requirements under the Act in respect of the sale or disposal of community land.
- 6.4. Where Council disposes of Land through the grant of a leasehold interest, Council must ensure that it complies with its obligations under the Act.
- 6.5. Subject to paragraphs 6.1 to 6.4 above, Council will dispose of Land by adopting any or all of the following Methods of Land Disposal:
- 6.5.1. Open Market Sale

Council will:
 - a) privately advertise the sale or disposal of the Land through a local newspaper and, if deemed appropriate by Council, a newspaper circulating throughout South Australia; or
 - b) in accordance with the provisions of Council's Procurement Policy, procure the services of a licensed real estate agent and / or auction house to sell or dispose of the Land.
 - 6.5.2. Expressions of Interest

Council will issue an open invitation to the market in respect of the sale or disposal of the Land to ascertain the availability of prospective purchasers. Council will then adopt a further Method of Land Disposal as appropriate.
 - 6.5.3. Select Tender

Council will issue an invitation to select persons in respect of the sale or disposal of Land.
 - 6.5.4. Open Tender

Council will issue an open invitation to the market in respect of the sale or disposal of the Asset.
 - 6.5.5. Direct Negotiation

Council will enter into negotiations with:

- a) owners of adjoining Land;
 - b) persons with a pre-existing interest in the Land; or
 - c) purchasers who propose to use the Land for a purpose consistent with Council's strategic objectives for the Land or generally.
- 6.6. Council will select a Method of Land Disposal upon consideration of the following:
- 6.6.1. the number of known potential purchasers of the Land;
 - 6.6.2. the original intention for the use of the Land;
 - 6.6.3. the current and possible preferred future use of the Land;
 - 6.6.4. the opportunity to promote local economic growth and development;
 - 6.6.5. financial delegation limits;
 - 6.6.6. accountability, responsibility, operation efficiency and the urgency of the sale or the disposal;
 - 6.6.7. the total estimated value of the sale or disposal;
 - 6.6.8. compliance with Council's statutory and other obligations; and
 - 6.6.9. any other matters Council deems relevant in the circumstances.
- 6.7. Land that is to be sold or disposed by Open Market Sale, Expressions of Interest or Open Tender will be the subject of an independent valuation obtained no later than 6 months before the date of any contract for sale entered into in respect of the Land. The independent valuation will be the reserve price set for any public auction.
- 6.8. Land that is to be sold or disposed of by Select Tender or Direct Negotiation will be the subject of 2 independent valuations obtained no later than 6 months before the date of any contract for sale entered into in respect of the Land.
- 6.9. Council will endeavour to sell or dispose of Land at or above the current market valuation unless there are reasons for Council to accept a lesser price which are consistent with Council's overall strategic objectives for the Land or generally. In those circumstances, Council must record those reasons in writing.
- 6.10. Council will not sell or dispose of Land to any Elected Member or Employee who has been involved in any process related to a decision to sell or dispose of the Land and / or the establishment of any reserve price for the Land.

7. SALE OR DISPOSAL OF ASSETS

7.1. Having regard to the Factors Relevant to Sale or Disposal, Council may sell or dispose of Assets.

7.2. Council will dispose of Assets by adopting any or all of the following Methods of Asset Disposal:

7.2.1. Open Market Sale

Council will:

- a) privately advertise the sale or disposal of the Asset through a local newspaper and, if deemed appropriate by Council, a newspaper circulating throughout South Australia; or
- b) in accordance with the provisions of Council's Procurement Policy, procure the services of a licensed auctioneer to sell or dispose of the Asset.

7.2.2. Trade-in

Council will trade-in the Asset to a preferred or existing contractor.

7.2.3. Expressions of Interest

Council will issue an open invitation to the market in respect of the sale or disposal of the Asset to ascertain the availability of prospective purchasers. Council will then adopt a further Method of Asset Disposal as appropriate.

7.2.4. Select Tender

Council will issue an invitation to select persons in respect of the sale or disposal of the Asset.

7.2.5. Open Tender

Council will issue an open invitation to the market in respect of the sale or disposal of the Asset.

7.2.6. Direct Negotiation

Council will enter into negotiations with persons with a pre-existing interest in the Asset or where a prospective purchaser of the Asset proposes to use the Asset for a purpose consistent with Council's strategic objectives for the Asset or generally.

- 7.3. Council will adopt a Method of Asset Disposal upon consideration of the following:
- 7.3.1. the public demand and interest in the Asset;
 - 7.3.2. the Method of Asset Disposal most likely to provide the highest return to Council;
 - 7.3.3. the value of the Asset;
 - 7.3.4. the costs associated with each Method of Asset Disposal compared to the expected returns;
 - 7.3.5. compliance with statutory obligations; and
 - 7.3.6. any other factor that Council deems relevant.
- 7.4. Council will not sell or dispose of an Asset to any Elected Member or Employee unless that sale or disposal has occurred as a result of an Open Market Sale or Open Tender and the Elected Member or Employee (as the case may be) was the highest bidder.
- 7.5. It must be a condition of any contract or agreement for the sale or disposal of an Asset that, to the extent permitted by law, Council:
- 7.5.1. makes no warranties regarding the suitability, nature or condition of the Asset; and
 - 7.5.2. will accept no liability regarding the suitability, nature or condition of the Asset from the date of such sale or disposal.

8. RECORDS

- 8.1. Where a Method of Land or Asset Disposal (as the case may be) other than an Open Tender results in the sale or disposal of Land or Assets, Council must keep a written record of its reasons for adopting that Method of Land or Asset Disposal (as the case may be). Such records will be kept and maintained by Council in accordance with the Record Management Policy and / or Procedure (or equivalent) adopted by Council from time to time.

9. POLICY EXEMPTIONS

- 9.1. Council recognises that in the case of emergency or where a response is required without delay, the ordinary principles set out in this Policy may be inappropriate. Such cases include, but are not limited to:

- 9.1.1. a state of emergency declared under the *Emergency Management Act 2004* (SA);
- 9.1.2. an incident that requires the activation of Council's Disaster Recovery and / or Business Continuity Plan;
- 9.1.3. an incident declared by the Chief Executive Officer (or their nominee) whereby the safety or security of any person or property associated with Council is threatened;
- 9.1.4. an external incident to which the Chief Executive Officer (or their nominee) has authorised the provision of urgent support; or
- 9.1.5. any other instance or circumstances as determined by the Chief Executive Officer (or their nominee)

("Exempt Events").

- 9.2. The Administration is not required to adhere to this Policy in circumstances where an Exempt Event occurs or is expected to occur and may instead pursue alternative means of the sale or disposal of any given Land or Asset. In those circumstances, the Administration must keep a written record of the reasons that an event has been deemed to constitute an Exempt Event.
- 9.3. The Administration must notify Council where it has not adhered to this Policy as a result of the occurrence of an Exempt Event.

10. DELEGATION

- 10.1. An Employee requires the written approval of the Chief Executive Officer (or their nominee) to sell or dispose of Assets.
- 10.2. In the case of the sale or disposal of Land, the Chief Executive Officer must seek Council approval by way of formal resolution.

11. PRUDENTIAL REQUIREMENTS

- 11.1. Council will comply with its prudential management requirements as set out in the Act by compliance with this Policy, the Budget Management Policy, the Financial Internal Controls Policy, the Fraud & Corruption Prevention Policy and any other risk management processes, policies and procedures developed by Council and in force from time to time.

12. POLICY MAINTENANCE AND REVIEW

- 12.1. This Policy will be kept on Council's website.

- 12.2. Council will undertake a review and evaluation of the effectiveness of this Policy at least once every 2 years and following general Council elections, in accordance with the Council's strategic management and planning framework. Council may, in any event, conduct a review and evaluation of the effectiveness of this Policy at any time.
- 12.3. The Chief Executive Officer will report to the Elected Members on the outcome of any such review and will make recommendations for amendments, alterations or substitutions as may be required.
- 12.4. If this Policy is amended, altered or substituted in accordance with the above, it will not apply retrospectively to a Method of Land or Asset Disposal (as the case may be) already commenced or completed.

TOWN OF



WALKERVILLE

The Corporation of the Town of Walkerville

ABN 49 190 949 882

66 Walkerville Terrace, Gilberton SA 5081

PO Box 55, Walkerville SA 5081

File Number: OLT201612272

Please Quote Ref: 14.16.1.5

Contact Officer: Chief Executive Officer, Kiki Magro

Telephone: (08) 8342 7100

Facsimile: (08) 8269 7820

Email: walkerville@walkerville.sa.gov.au

[/www.walkerville.sa.gov.au](http://www.walkerville.sa.gov.au)

23 November 2016

Edward Jolly (Agent for)
Ms Patricia Jackson of 6 Victoria Street, Walkerville
GPO Box 2516
Adelaide SA 5001

Via Email: ejolly@lenkingchambers.com.au

Dear Mr Jolly,

Re: Victoria Terrace, Encroachment

As you are aware, as part of its preliminary works towards establishing 'Howie Reserve' (adjacent Victoria Terrace, Walkerville) as Community Land, Council, via advice from surveyors (refer formal surveyors plans attached) has determined that a Portion of Victoria Terrace (conceptually described as Portion C herein), is encroached by the owner and register proprietor of the land at 6 Victoria Terrace, Walkerville (Ms Patricia Jackson), your mother.



Ms Jackson has nominated you as her agent to conduct all dealings on this matter with Council and its representatives. On that basis I understand you had met with Mr James Forde, Town of Walkerville representative (at the time), on this matter and corresponded with him (via email).

I understand your proposition as presented to Mr Forde on 5th October 2016, was as follows;

- That there be a mutual land swap between Ms Jackson and the Council to rectify the existing encroachments by her and the Council (relating to Portion C & D);
- That there be no consideration for the mutual swap;
- That as part of a swap, a portion of the existing south western boundary (where the path is at its narrowest) will be retained by the Council on alignment to be agreed between you and I, if the main proposal is accepted by Council;

- That when the road is closed as part of the park redevelopment, a conveyance will occur that will give effect to the land swap
- That conveyance will have the effect of removing the existing encroachments and the boundaries as they currently subsist (save for the path widening) will form part of the CT for 6 Victoria Terrace.

Mr Forde, committed to presenting your proposition to Council, but provided a caveat that he was not the decision maker. He also noted that there are a course of alternate solutions, and as such would provide a comprehensive reports to Council canvassing a range of options and analysis of same, for consideration by Council.

The matter of the 'encroachment' was presented to Council (in confidence) at its Meeting on 21 November 2016.

Following careful consideration of the options and your proposition, Council has resolved the following;

"CNC212/16-17

1. *The Administration proceed to close Portion A (as delineated within the report entitled "Howie Reserve – Road Closure" dated 21 November 2016) and that the boundaries of the land are drawn to ensure that all relevant services are maintained.*
2. *The Administration exclude closure of Portion B (as delineated within the report entitled "Howie Reserve – Road Closure" dated 21 November 2016) from the road closure process and that the boundaries of the land are drawn to ensure that all relevant services are maintained.*
3. *The Administration exclude closure of Portion C (as delineated within the report entitled "Howie Reserve – Road Closure" dated 21 November 2016) from the road closure process and that Ms Jackson be offered an authorisation under section 221 of the Local Government Act 1999 (SA) while she remains the registered proprietor and a permanent resident at 6 Victoria Terrace.*

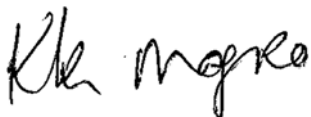
**** The above decisions are held in confidence are only released to you enable the enactment of the resolutions.**

In reaching a decision the Council has given due consideration to your request and the longer term needs and interests of the Community, and decided to retain the land described as Portion C as a Road, but allow an authorisation (LGAct Section 221) to Ms Jackson to encroach the land described as Portion C (for no consideration), to enable Ms Jackson to continue to have access to enjoyment of the land while she is a permanent resident at 6 Victoria Terrace, Walkerville.

Council will now arrange (at its cost), legal documentation establish this authorisation.

Please note that either General Manager, Heather Barclay or I will be pleased to further discuss this matter with you at your convenience.

Yours Sincerely,



Kiki Magro
Chief Executive Officer

AUTHORISATION

6 VICTORIA TERRACE, WALKERVILLE

THE CORPORATION OF THE TOWN OF WALKERVILLE

(Council)

AND

PATRICIA ANNE JACKSON

(Grantee)

DATE

PARTIES

THE CORPORATION OF THE TOWN OF WALKERVILLE of 66 Walkerville Terrace, Gilberton SA 5081 (**Council**)

PATRICIA ANNE JACKSON of 6 Victoria Terrace, Walkerville SA 5081 (**Grantee**)

BACKGROUND

- A. The Council is a council constituted under the *Local Government Act 1999* (**LG Act**) and it is entitled to exercise the powers conferred on it under the LG Act.
- B. The Council is vested with the fee simple of the whole of the roads within the Council's area.
- C. The Grantee wishes to undertake and maintain the Alteration for the Authorisation Period pursuant to section 221 of the LG Act.
- D. The Council has agreed to grant an authorisation to the Grantee to undertake the Alteration in accordance with the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Alteration means the alteration to the Road described in Item 3.

Authorisation means this authorisation granted by the Council to the Grantee for the Alteration in accordance with section 221 of the LG Act.

Authorisation Period means the period described in Item 4.

Commencement Date means the date of this Authorisation.

Council means the party described as 'Council' in this Agreement and where the context permits includes its members, employees, contractors, agents, authorised representatives and other invitees.

Fee means the fee described in Item 5.

Grantee means the party described in Item 1.

Legislation includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law, including any by-laws issued by any local government body or authority.

LG Act means the *Local Government Act 1999*.

Plans means the plans attached in the Annexure as approved or amended and approved by the Council.

Road means that portion of public road described in Item 2 and where relevant includes the Structure (if any).

Statutory Requirements means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation.

Structure means any structure, fixture, fitting or property erected and/or installed in, on, across, under or over the Road (and includes any tree or vegetation planted on the Road) forming part of the Alteration as permitted and authorised by the Authorisation in accordance with the Plans.

1.2 Interpretation

Unless the contrary intention appears:

- 1.2.1 a reference to an Item is a reference to an item in the Schedule;
- 1.2.2 a reference to a Schedule is a reference to a schedule forming part of this Agreement;
- 1.2.3 a reference to an Annexure is a reference to an annexure attached to this Agreement;
- 1.2.4 a reference to a Statute shall include all amendments for the time being in force and any other statute enacted in substitution thereof and regulations and by-laws for the time being under the statute and any notice, demand, order, direction, requirement or obligation under or pursuant to that statute or those regulations or by-laws and the expressions 'statute', 'act' and 'by-laws' shall mean any federal, state or local government statute, act, regulation or by-law from time to time in force and any notice, demand or direction, requirement or obligation issued, made, given or imposed under or pursuant to the same;
- 1.2.5 words importing the singular embrace the plural and words importing one gender shall embrace the other gender and vice versa respectively;
- 1.2.6 any reference to a person shall be deemed to include a corporate body and vice versa;
- 1.2.7 headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- 1.2.8 where the words 'not applicable' or 'nil' appear opposite any part of any Item of the Schedule, each and every clause in this Agreement in which specific reference is made to such part if the relevant item in the Schedule shall so far as the context shall permit be null and void and of no effect;
- 1.2.9 Any special condition in the Schedule will apply to this Agreement and in the event of any inconsistency with the terms and conditions in the body of this Agreement then those special conditions will prevail.

2. GRANT OF AUTHORISATION

- 2.1 In consideration of payment of the Fee, the Council authorises the Grantee pursuant to section 221 of the LG Act to undertake and thereafter maintain the Alteration and any Structure during the Authorisation Period.

- 2.2 The rights conferred in this Agreement rest in contract only and do not create or confer upon the Grantee any tenancy, estate or interest in or over the Road and the rights of the Grantee under this Agreement shall be those of a licensee only and do not comprise or include any further or other rights.

3. GRANTEE'S COVENANTS

The Grantee expressly covenants and agrees with the Council that during the Authorisation Period, the Grantee shall comply with the covenants, terms and conditions of this Agreement as follows:

3.1 Fee

To pay to the Council the Fee set out in Item 5 in the manner specified therein.

3.2 Additional Charges

To pay any taxes, rates or charges levied by any government, civic or municipal authority whether federal, state or local in respect of the Grantee's Alteration of the Road or otherwise in connection with the Authorisation.

3.3 Indemnity and Release

3.3.1 To indemnify the Council from and against all actions, costs, claims and damages which may be brought or claimed against the Council arising out of or in relation to the granting of the Authorisation and the undertaking of the Alteration except where any action, cost, claim or damage is caused by the negligence or default of the Council.

3.3.2 Without limiting clause 3.3.1, the Grantee acknowledges and agrees that the Council is in no way responsible or liable for any loss or damage caused to or by the Alteration or any Structure erected or installed in, on, across, under or over the Road and the Grantee releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the Alteration or Structure.

3.4 Council's Insurance

If by reason of the Grantee's default or negligence the Council claims under the Local Government Mutual Liability Scheme or under insurance held by the Council, the Grantee bears any excess or deductible for that claim.

3.5 Alteration

To ensure that the Alteration permitted by the Authorisation is in a form acceptable to Council acting reasonably.

3.6 Compliance with Direction of Government Department or Authority

3.6.1 To ensure that the Alteration does not interfere with or cause damage to or affect in any way any adjoining property or any wire, post, cable, pipe or other property or infrastructure belonging to Council and/or a service provider or any other federal, state or local government department or authority or any other adjoining property owner.

3.6.2 If any damage specified in clause 3.6.1 does occur, without limiting the provisions contained in clause 3.3, the Grantee agrees to indemnify the Council to the full extent permitted by law against any claim made against the Council for such damage and the Grantee agrees to make good any such damage or to reimburse the Council for any cost or expense it incurs in making good the damage.

3.7 Authorised Use

Not to undertake or permit any alteration to the Road other than in accordance with the Authorisation.

3.8 Maintenance and Repair

3.8.1 At its own cost and expense during the Authorisation Period to maintain the Alteration (including any Structure in, on, across, under or over the Road) and keep the Alteration in good, safe and proper repair and condition to the Council's satisfaction.

3.8.2 Where the Grantee undertakes maintenance work to the Alteration, the Structure, the Road or any area near the Road, the Grantee must during the period in which the works are being carried out, install and erect such warning signs and devices as are required by Council, including but not limited to installing lighting and fencing on the Road in the immediate vicinity of the Alteration.

3.9 Inspection of Alteration

To permit the Council upon reasonable notice to inspect the Alteration and the Road and to comply with all reasonable requests of the Council in relation to the Alteration, the Road (including the Grantee's use of the Road under the Authorisation) and any maintenance or repair to the Alteration and/or the Road.

3.10 Notification of Damage

If the Grantee does cause any damage to the Road or any part of the Road or any of Council's property as a result of the Grantee's use or misuse of the Road, the Grantee must notify the Council and at the Grantees own cost and expense immediately rectify the damage and reinstate the Road to the reasonable satisfaction of the Council.

4. MUTUAL COVENANTS

4.1 Agreement not Transferable

This Agreement is not transferable.

4.2 Execution of Agreement

The Authorisation is not effective until the Grantee has received a copy of this Agreement signed by the Council.

4.3 Contractual Rights Only

This Agreement does not confer on the Grantee any exclusive right, entitlement or proprietary interest in the Road.

4.4 Termination of Authorisation

The Authorisation will immediately cancel on the earlier of:

- 4.4.1 the expiration of the Authorisation Period; or
- 4.4.2 the termination of the Authorisation by the Council as permitted under this Agreement.

4.5 Breach

- 4.5.1 If the Grantee breaches a provision of the Authorisation and such breach is capable of remedy, it will have fourteen (14) days from the receipt of a notice from Council advising of the breach (**Notice**) and if the Grantee fails to remedy the breach within fourteen (14) days of the Notice, the Council may give the Grantee a written notice in respect of the breach and the proposed termination of the Authorisation.
- 4.5.2 If the Council does give the Grantee a Notice, such Notice must advise the Grantee:
 - (a) that it is in breach of the Authorisation;
 - (b) the grounds on which the Council proposes to terminate the Authorisation; and
 - (c) Allow the Grantee a reasonable time period within which it may give the Council written representations on the proposed termination.
- 4.5.3 If the Council receives written representations from the Grantee with respect to the proposed termination of the Authorisation, the Council must consider all representations.
- 4.5.4 The Council must after having considered all representations from the Grantee confirm in writing to the Grantee that:
 - (a) the Council accepts the written representations made by the Grantee and that the Authorisation will not be terminated; or
 - (b) the Council does not accept the written representations and that the Authorisation is terminated, effective immediately.
- 4.5.5 If the Council serves a notice on the Grantee in accordance with clause 4.5.2, the time period specified in the notice must be at least one (1) month unless the Council determines that a shorter period should apply to protect the health or safety of the public or otherwise to protect the public interest.

4.6 Costs

- 4.6.1 The Council is responsible for the costs of preparing this Agreement.
- 4.6.2 The Grantee is responsible for all costs incurred by the Council as a consequence of any actual or threatened breach by the Grantee.

EXECUTED as an agreement

COUNCIL

The **COMMON SEAL** of **THE**)
CORPORATION OF THE TOWN OF)
WALKERVILLE was affixed in the)
presence of:)

.....
Mayor

.....
Chief Executive Officer

GRANTEE

SIGNED by **PATRICIA JACKSON** in the)
presence of:)

.....
Signature of witness

.....
Patricia Jackson

.....
Name of witness (print)

SCHEDULE

| | |
|--|--|
| Item 1 Grantee | PATRICIA ANNE JACKSON |
| Item 2 Road | That portion of 6 Victoria Terrace, Walkerville described as Portion C on the plan attached |
| Item 3 Alteration | The establishment and maintenance of a garden, retaining walls, driveway and other structures |
| Item 4 Authorisation Period | From the Commencement Date for the period that the Grantee remains the registered proprietor and permanent resident of 6 Victoria Terrace, Walkerville |
| Item 5 Fee | One Dollar (\$1.00) per annum (inclusive of GST) if demanded |
| Item 6 Special Conditions | Nil |

ANNEXURE PLAN



Allison Down

From: Edward Jolly <ejolly@lenkingchambers.com.au>
Sent: Thursday, 30 March 2017 9:43 AM
To: Allison Down
Cc: Heather Barclay
Subject: EM201723421 - 14.16.1.5 - RE: Section 221 Authorisation for Patricia Anne Jackson
SynergySoft: EM201723421 - 14.16.1.5

Hello Ms Down,

The Council's resolution of 21 November 2016 is not acceptable, and thus rejected.

The resolution does not deal with Portion D (referred to in the Council's letter dated 23 November 2016).

I apologise for the delay in responding to the resolution.

There has been much discussion amongst the family (my mother and her three children) on how to proceed following the resolution. For the moment, our desire is to continue to explore a mutually agreeable resolution.

If we are unable to reach a compromised position, then the default position will be that all encroachments are restored to the original boundary alignments and fencing erected to clearly delineate the restored boundaries. Including Portion D. If this is to occur, this should start as soon as possible in order to allow for suitable landscaping to be installed and thus commence maturing, in order to try and minimise the inevitable loss of value to the property.

Our position is that the suggested equitable resolution negotiated with Mr Forde on 5 October 2016 remain the starting point for any future negotiations. This would be our position if we are unable to resolve this issue and it requires a judicial solution.

I am available throughout most of today and next week to discuss these issues.

Regards,

Edward Jolly

Level 6, 185 Victoria Square, Adelaide SA 5000

GPO Box 2516 Adelaide 5001

P: 8210 6400 | M: 0419 842 905 | E: ejolly@lenkingchambers.com.au

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From: Allison Down [mailto:ADown@walkerville.sa.gov.au]
Sent: Wednesday, 29 March 2017 5:17 PM
To: Edward Jolly <ejolly@lenkingchambers.com.au>
Cc: Heather Barclay <HBarclay@walkerville.sa.gov.au>
Subject: Section 221 Authorisation for Patricia Anne Jackson

Good afternoon Mr Jolley,

I have recently commenced with the Town of Walkerville and am looking to progress with the Authorisation for your Mother in relation to the Howie Reserve road closure. I'm endeavouring to pick up from where James had left off and where Heather had progressed to in back in December.

A copy of the Authorisation is attached. I'm wondering if you might have some time free for me to give you a call to discuss so that I can get an idea of timing that you might need to work with and to see if you have any questions or concerns regarding the document?

thanks

Regards,

Allison Down
Property & Contracts Officer



Town of Walkerville

Executive and Leadership | 66 Walkerville Terrace, Gilberton SA 5081
PO Box 55 | Walkerville SA 5081
T +61 8 8342 7135 | F +61 8 8269 7820 | M +61 437 918 759
www.walkerville.sa.gov.au | adown@walkerville.sa.gov.au

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From: Tahlia Willey
Sent: Wednesday, 7 December 2016 4:39 PM
To: Edward Jolly <ejolly@lenkingchambers.com.au>
Subject: EM201612600 - 14.16.1.5 - RE: OLT201612272 - 14.16.1.5 - Confidential | Victoria Terrace, Encroachment

Dear Mr Jolley,

Thank you for your email. It has been forwarded onto the CEO, Kiki Magro and the General Manager, Heather Barclay.

Regards,

Tahlia Willey
Executive Assistant
(to the Chief Executive Officer and General Manager)

Town of Walkerville

Executive and Leadership | 66 Walkerville Terrace, Gilberton SA 5081
PO Box 55 | Walkerville SA 5081
T +61 8 8342 7140 | F +61 8 8269 7820
www.walkerville.sa.gov.au | twilley@walkerville.sa.gov.au

From: Edward Jolly [<mailto:ejolly@lenkingchambers.com.au>]
Sent: Wednesday, 7 December 2016 3:26 PM
To: Tahlia Willey <TWilley@walkerville.sa.gov.au>
Subject: RE: OLT201612272 - 14.16.1.5 - Confidential | Victoria Terrace, Encroachment

Dear Ms Willey,

My apologies for the delay in responding to the Council’s letter. I have been away on business in Port Augusta for the last two weeks of November and the first week of December.

I will respond to the Council’s resolutions early in the New Year in order to allow my Mother sufficient time to consider the resolutions and her options.

I would be grateful if you could please convey this email to Ms Magro.

Thank you,

Edward Jolly

Level 6, 185 Victoria Square, Adelaide SA 5000

GPO Box 2516 Adelaide 5001

P: 8210 6400 | F: 8121 7639 | M: 0419 842 905 | E: ejolly@lenkingchambers.com.au

From: Tahlia Willey [<mailto:TWilley@walkerville.sa.gov.au>]
Sent: Wednesday, 23 November 2016 4:23 PM
To: Edward Jolly <ejolly@lenkingchambers.com.au>
Subject: OLT201612272 - 14.16.1.5 - Confidential | Victoria Terrace, Encroachment

Dear Mr Jolly,

On behalf of Kiki Magro, please see attached letter.

Regards,

Tahlia Willey
Executive Assistant
(to the Chief Executive Officer and General Manager)



Town of Walkerville

Executive and Leadership | 66 Walkerville Terrace, Gilberton SA 5081
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www.walkerville.sa.gov.au | twilley@walkerville.sa.gov.au

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HARRIS RD, VALE PARK
TINSEL THE REINDEER, FOOD STALLS, ENTERTAINMENT, SANTA, ROTARY BBQ & MORE
TOWN OF WALKERVILLE
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