



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	
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 close 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 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 notified of the effect of this resolution.

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” date and any other documentation relative to the report to be retained in confidence excluding minutes in relation to this Agenda Item No 16.1.1 and minutes relating to this Agenda Item No 16.1.1 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 Agenda Item No 16.1.1.

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 Victoria Terrace and Howie Reserve. The Administration has now obtained a survey in respect of the site. The above picture separates the road into four approximate parts.

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 the options for Council moving forward.

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 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 cannot access her property without traversing Portion C.

Discussion/Issues for Consideration

The Administration has met with Ms Jackson's son and 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; 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 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).

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.

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 C**". 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

Ms Jackson is an elderly resident and the community may have expectations regarding how Council proceed in the circumstances.

Governance Implications

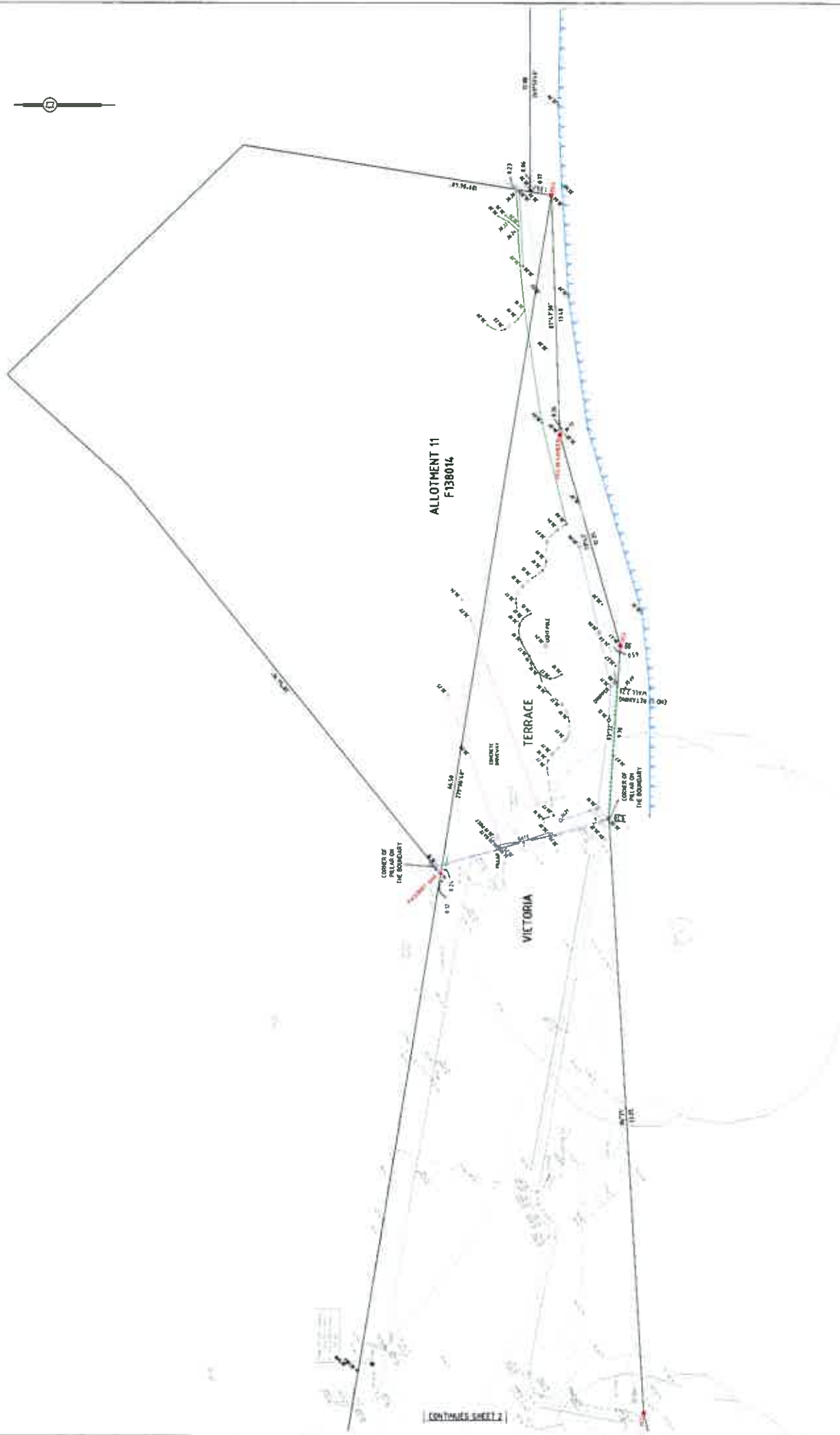
The governance implications are not prohibitive for any course of action.

Preferred Option & Reasoning

The Administration recommends that Council adopt Option 1 incorporating a "do nothing" approach. This maintains the status quo and does not ask Ms Jackson to enter into any form of negotiation or dispute at this time. It does, however, leave the matter open for the future in the event that Council wishes to reclaim some or all of Portion C for the purposes of widening and / or making safe the pathway along Linear Park. This will become a relevant consideration as the Mary P Harris and Howie Reserve redevelopment project continues.

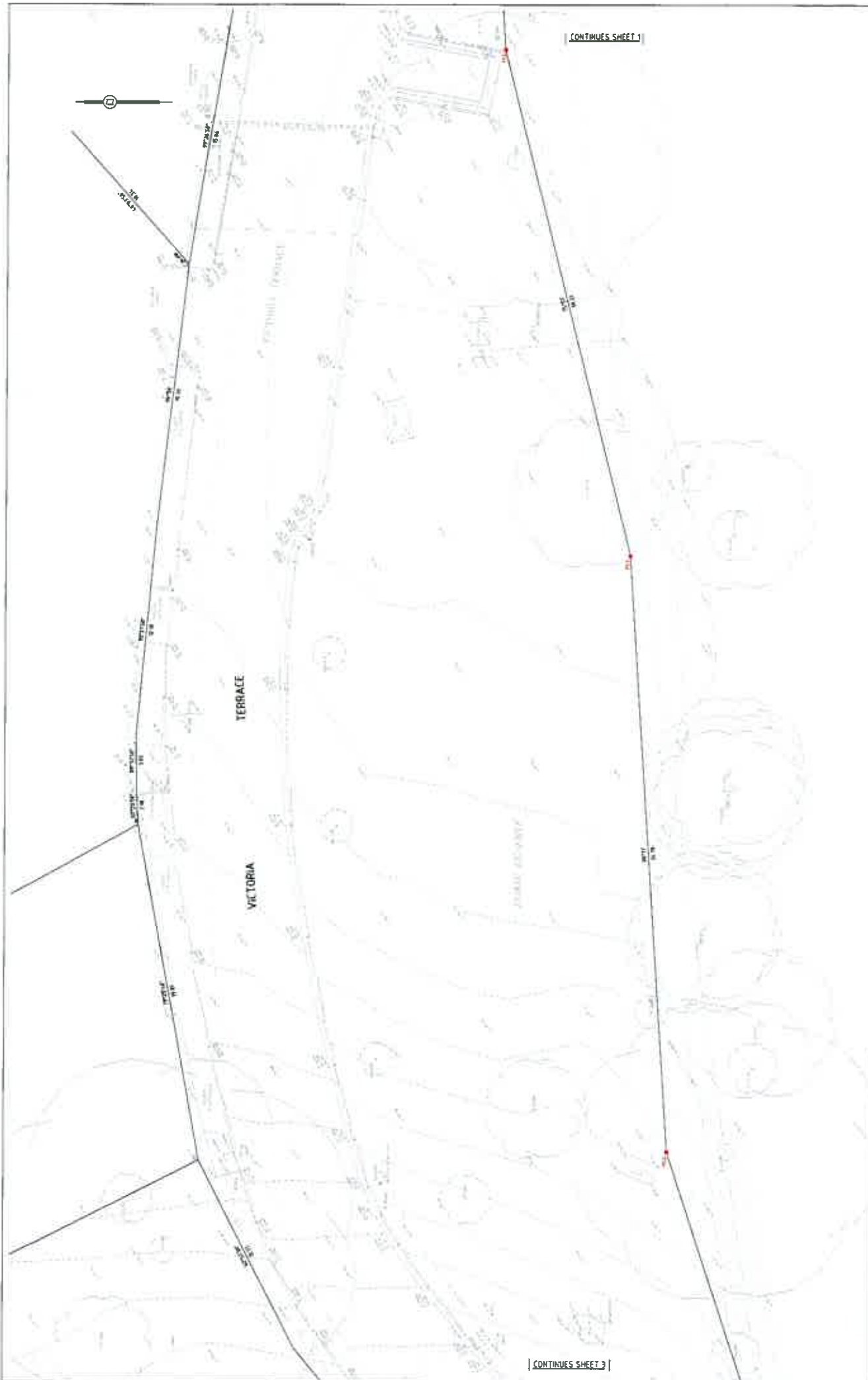
Attachments

- 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



CONTINUES SHEET 2

 <p>23 Kingsley Street WALKERVILLE NSW 2250 PH: 02 9438 2222 WWW.MOSAICLANDSERVICES.COM.AU</p>	<p>SCALE: GRAPHIC SCALE 1:1000</p> <p>COORDINATE DATUM: PLANE HEIGHT DATUM: PEG 11552, RL 38.416m AHD</p> <p>CONTIGUOUS INTERNAL: N/A</p> <p>CONTIGUOUS EXTERNAL: N/A</p> <p>CLIENT: TOWN OF WALKERVILLE</p>	<p>DATE: 10/11/18</p> <p>NATURAL SINKHOLE: X</p> <p>TYPE BOUNDARY: ---</p> <p>EDGE OF CONCRETE CURB OR BENCH: ---</p> <p>TOP OF BANK: ---</p> <p>CONCRETE CURB: ---</p> <p>SLURRY RETAINING WALL: ---</p>	<p>REVISIONS:</p> <p>NO. 1: 10/11/18: INITIAL SURVEY & DESIGN</p> <p>NO. 2: 10/11/18: COMPLETE SURVEY DRAWING SET</p> <p>NO. 3: 10/11/18: DATED 10/11/18</p>	<p>FIELD WORK COMPLETED 22/01/18</p> <p><i>J. L. L. L.</i></p> <p>UNASSIGNED SURVEYOR</p>	<p>LEGEND:</p> <p>--- BOUNDARY</p> <p>--- CONCRETE CURB OR BENCH</p> <p>--- TOP OF BANK</p> <p>--- CONCRETE CURB</p> <p>--- SLURRY RETAINING WALL</p>	<p>1:0 N/A/M/A FIRST ISSUE TO CLIENT</p> <p>1:1000</p> <p>ACCURACY 8 METRE/100 METRES</p>	<p>IDENTIFICATION & SITE SURVEY</p> <p>VICTORIA TERRACE ADJACENT TO ALLOT 11 IN F138014</p> <p>WALKERVILLE</p>
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CONTINUES SHEET 1

CONTINUES SHEET 3

 <p>23 Macquarie Street, Suite 100 Sydney NSW 2000 Phone: (02) 9550 1000 Fax: (02) 9550 1001 www.mosaicland.com.au</p>	<p>SCALE: ORIGINAL SHEET SIZE: A1 COORDINATE DATUM: PLUMMER LOCALITY: WALKERVILLE CONTIGUOUS INTERVAL: N/A SURVEY DATE: 27/04/16 CLIENT: TOWN OF WALKERVILLE</p>	<p>POST: L X NATURAL SURFACE FENCE: BOUNDARY EDGE OF CONCRETE CONCRETE BOUNDARY CONCRETE WALL FOOTING SLEEPER W/ FASING WALL</p>	<p>DELL INFORMATION SUPPLIED ONLY IS FROM AN OLD COMPLETE SURVEY'S DRAWING REF 4975-3 DATED 19/01/76</p>	<p>UNPLANNED DEVELOPMENT, THIS PLAN IS PREPARED BY THE SURVEYOR OF THE TOWN OF WALKERVILLE AND IS NOT A PROFESSIONAL SURVEY. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO EVIDENCE OF ANY UNPLANNED DEVELOPMENT. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO EVIDENCE OF ANY UNPLANNED DEVELOPMENT. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO EVIDENCE OF ANY UNPLANNED DEVELOPMENT.</p>	<p>DATE: 27/04/16 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]</p>	<p>IDENTIFICATION & SITE SURVEY VICTORIA TERRACE ADJACENT TO ALLOT 11 IN F138014 WALKERVILLE</p>
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CONTINUES SHEET 2

IDENTIFICATION & SITE SURVEY
 VICTORIA TERRACE
 ADJACENT TO
 ALLOT 11 IN F136014
 WALKERVILLE

WORKED UNDER THE ACTS RELATING TO THE SURVEYING PROFESSION AND THE SURVEYING REGULATIONS 1998. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACTS AND REGULATIONS. THE SURVEYOR HAS TAKEN ALL REASONABLE PRECAUTIONS TO ENSURE THE ACCURACY OF THIS SURVEY. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY ADVERSE INTERESTS OR RIGHTS AFFECTING THIS SURVEY. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY ADVERSE INTERESTS OR RIGHTS AFFECTING THIS SURVEY. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY ADVERSE INTERESTS OR RIGHTS AFFECTING THIS SURVEY.

INFORMATION SHOWN ONLY IS FROM ADELAIDE COMPLETE SURVEY DRAWING REF #010-3 DATED 20/04/16

POST
 X NATURAL SURFACE
 L BOUNDARY
 C EDGE OF CHANNEL
 G CONCRETE BORDER
 F TOP OF BANK
 E FOOTING
 D SLEEPER RETAINING WALL

SCALE
 ORIGINAL: SHEET SIZE: A1
 COORDINATE DATUM: PLANE
 CONTOUR INTERVAL: 1m
 SURVEY DATE: 27/11/16
 CLIENT: TOWN OF WALKERVILLE

10 METRES
 0 2 4 6 8 10

Mosaic
 25 Mosaic Drive
 Walkerville SA 5037
 Phone: 08 8352 1000
 Fax: 08 8352 1001
 Email: info@mosaic.com.au
 Website: www.mosaic.com.au



CONTINUES SHEET 2

IDENTIFICATION & SITE SURVEY

VICTORIA TERRACE
ADJACENT TO
ALLOT 11 IN F138014
WALKERVILLE

PROPERTY OFFICER: [Name]
DATE OF SURVEY: [Date]
PROJECT NO: [Number]

FIELD WORK COMPLETED 22/06/18

 Licensed Surveyor

NOTE:
 INFORMATION SHOWN ON THIS PLAN IS FROM AN ADEQUATE
 COMPLETE SURVEY'S DRAWINGS REF #0124-02
 DATED 05/01/18

LEGEND:

- BOUNDARY
- EDGE OF CONCRETE
- CONCRETE BORDER
- CONCRETE
- PAVING
- SLEEPER RETAINING WALL

POSTS:

- L NATURAL SURFACE
- X

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 SURVEY DATE: 22/06/18
 CLIENT: TOWN OF WALKERVILLE



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

DATE: 22/01/15
 PROJECT NO: 150000000
 CLIENT: TOWN OF WALKERVILLE
 PROJECT: ROAD TO CLON
 ADDRESS & PERMITS

NOTE: THIS PLAN IS SUBJECT TO THE ACTING SURVEYOR'S FIELD BOOK AND THE SURVEYOR'S FIELD BOOK IS THE ONLY AUTHORITY FOR THE LOCATION OF ALL POINTS AND LINES. THE SURVEYOR HAS NOT CONDUCTED A VISUAL SURVEY OF THE SITE AND HAS NOT BEEN ADVISED OF ANY CHANGES TO THE SITE SINCE THE SURVEY WAS CONDUCTED. THE SURVEYOR HAS NOT CONDUCTED A VISUAL SURVEY OF THE SITE AND HAS NOT BEEN ADVISED OF ANY CHANGES TO THE SITE SINCE THE SURVEY WAS CONDUCTED. THE SURVEYOR HAS NOT CONDUCTED A VISUAL SURVEY OF THE SITE AND HAS NOT BEEN ADVISED OF ANY CHANGES TO THE SITE SINCE THE SURVEY WAS CONDUCTED.

SCALE: 1:1000
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 HEIGHT DATUM: AUSTRALIAN HEIGHT DATUM
 SHEET DATE: 22/01/15
 CLIENT: TOWN OF WALKERVILLE

SCALE: 0 2 4 6 8 10 METRES
 ORIGINAL SHEET: SHEET 1
 COORDINATE DATUM: PLANS
 HEIGHT DATUM: AUSTRALIAN HEIGHT DATUM
 SHEET DATE: 22/01/15
 CLIENT: TOWN OF WALKERVILLE

SCALE: 0 2 4 6 8 10 METRES
 ORIGINAL SHEET: SHEET 1
 COORDINATE DATUM: PLANS
 HEIGHT DATUM: AUSTRALIAN HEIGHT DATUM
 SHEET DATE: 22/01/15
 CLIENT: TOWN OF WALKERVILLE

CONTINUES SHEET 3



Maptek Engineering
101-107 Stirling Highway Perth WA 6008
PH: 9447 3900 FAX: 9447 3901
WWW: www.maptek.com.au
NUTCRACKER AVENUE 9477WA 6/27/16

0	2	4	6	8	10
METRES					
SCALE	GRAPHIC SCALE 1:1				
COORDINATE DATUM:	AUSTRALIAN NATIONAL BASKET				
HEIGHT DATUM:	1984 AD				
COORDINATE SYSTEM:	GDA 94				
CUSTOMER:	DAVID BROWN				
CLIENT:	DAVID BROWN				

LEGEND
--- (Dashed line) --- NATURAL SURFACE
--- (Solid line) --- CONCRETE
--- (Dotted line) --- SLOPE RETAINING WALL
--- (Thick solid line) --- CONCRETE BOUNDARY
--- (Thin solid line) --- TOP OF BANK
--- (Thin dotted line) --- CONCRETE MARKER
--- (Thick solid line) --- SLOPE RETAINING WALL

REVISIONS
NO. 1: DATE: 10/07/16
BY: [Signature] DESCRIPTION: [Signature]
NO. 2: DATE: 10/07/16
BY: [Signature] DESCRIPTION: [Signature]
NO. 3: DATE: 10/07/16
BY: [Signature] DESCRIPTION: [Signature]
NO. 4: DATE: 10/07/16
BY: [Signature] DESCRIPTION: [Signature]

PROJECT INFORMATION
TITLE: IDENTIFICATION & SITE SURVEY
PROJECT NO.: VTT/16/014
CLIENT: DAVID BROWN
DATE: 10/07/16
PROJECT LOCATION: WALKERVILLE
PROJECT ADDRESS: VICTORIA TERRACE ADJACENT TO ALLOT 11 IN F138014
PROJECT DESCRIPTION: IDENTIFICATION & SITE SURVEY

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Meeting: Council

Title: Howie Reserve Status Report

Responsible Manager: Chief Executive Officer, Kiki Magro

Author: General Manager, Heather Barclay

Type of Report: **Information Only**

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".

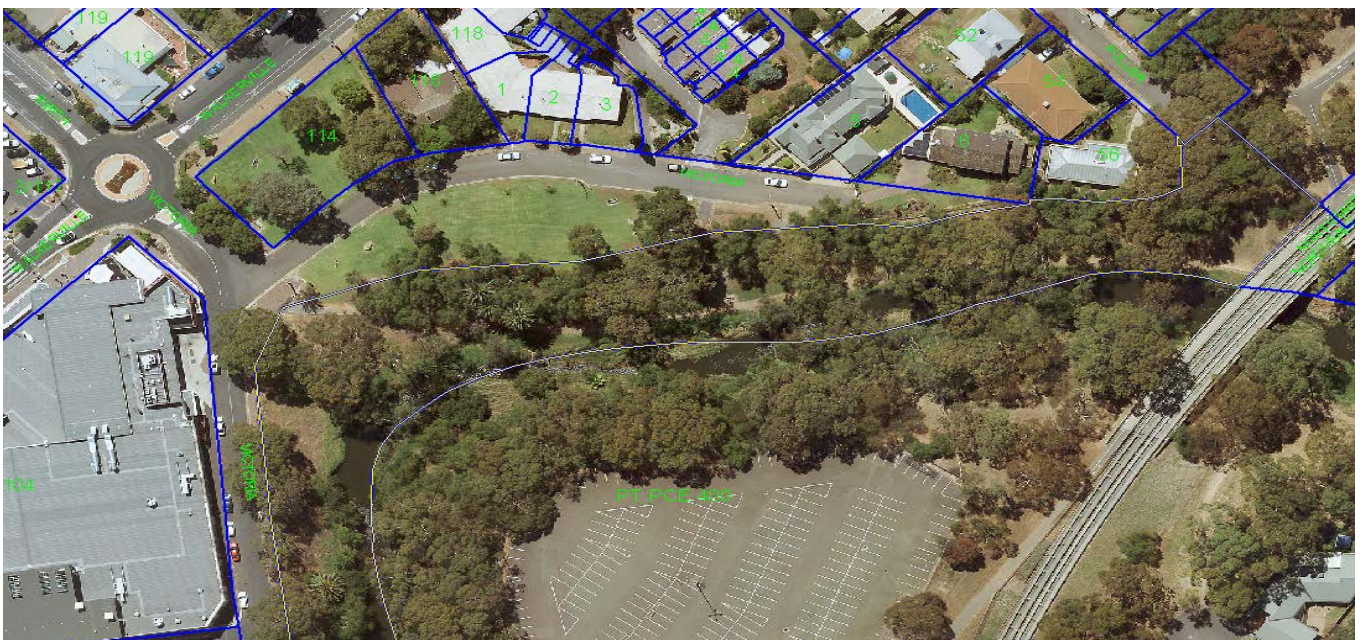
The process towards closing a portion of the road (under the Roads Opening and Closing Act) and establishing that portion as community land (under the LGAct), will not be limited to the following;

- 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>





Our Ref: JWM:KJH:160999

Your Ref:

18 March 2016

Mr James Forde
Property and contracts manager
Corporation of the Town of Walkerville
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ABN 98 802 494 422

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
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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.

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

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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).



As soon as practicable after the order is made

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.



If it is determined an order should not be made

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.



Within three months after the order is made

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



Disposal Of Land And Assets Policy

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.