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**I hereby give notice that a Council Meeting will be held on:**

**Date: Tuesday, 18 January 2022**  
**Time: 6.00 p.m.**  
**Location: Council Chamber**  
**Civic Centre**  
**10 Watson Terrace**  
**Mount Gambier**

link for public to view: <https://www.youtube.com/user/CityOfMountGambier/live>

# **CONFIDENTIAL AGENDA**

**Council Meeting**  
**18 January 2022**

A handwritten signature in black ink, appearing to read "Sarah Philpott", is positioned above the printed name and title.

**Sarah Philpott**  
**Chief Executive Officer**  
**14 January 2022**

## 26 NEW CONFIDENTIAL ITEMS

### 26.1 ROAD OPENING PROCESS - PINEHALL AVENUE/O'LEARY ROAD, SUTTONTOWN – REPORT NO. AR21/84957

#### CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except the Mayor, Councillors and (Council Officers) be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.1 AR21/84957 Road Opening Process - Pinehall Avenue/O'Leary Road, Suttontown.

The Council is satisfied that, pursuant to section 90(3) (a), (b), (d) and (i) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is:

- information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is
  - conducting business; or
  - proposing to conduct business; or
  - to prejudice the commercial position of the Council
- commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
  - to prejudice the commercial position of the person who supplied the information, or
  - to confer a commercial advantage on a third party
- information relating to:
  - actual litigation, or
  - litigation that the Council or Council committee believes on reasonable grounds will take place,
  - involving the Council or an employee of the Council

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information considered relates to the valuation and compulsory acquisition of land for road opening purposes for which an agreement is yet to be reached and it is reasonably considered may result in litigation.



**26.1 ROAD OPENING PROCESS - PINEHALL AVENUE/O'LEARY ROAD, SUTTONTOWN –  
REPORT NO. AR21/84957**

<b>Committee:</b>	<b>Council</b>
<b>Meeting Date:</b>	<b>18 January 2022</b>
<b>Report No.:</b>	<b>AR21/84957</b>
<b>CM9 Reference:</b>	<b>AF13/64</b>
<b>Author:</b>	<b>Elisa Solly, Property Support Officer</b>
<b>Authoriser:</b>	<b>Darren Barber, General Manager Corporate and Regulatory Services</b>
<b>Summary:</b>	<b>This report presents an update to the road opening and land acquisition process for the Pinehall Avenue and O'Leary Road intersection.</b>
<b>Strategic Plan Reference:</b>	<b>Goal 1: Our People</b> <b>Goal 2: Our Location</b> <b>Goal 3: Our Diverse Economy</b> <b>Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage</b> <b>Goal 5: Our Commitment</b>

The Council is satisfied that, pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- (b) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business; or proposing to conduct business; or to prejudice the commercial position of the Council
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected: to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party
- (i) information relating to: actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council.

**REPORT RECOMMENDATION**

1. That Council Report No. AR21/84957 titled 'Road Opening Process - Pinehall Avenue/O'Leary Road, Suttontown' as presented on 18 January 2022 be noted.
2. That, no submissions or objections having been received, a Road Process Order be made and a Final Plan prepared to open as road a 505 m<sup>2</sup> portion of 181 Pinehall Avenue, Suttontown being portion of Allotment 132 in Filed Plan 194744 contained in Certificate of Title Volume 5368 Folio 920 as shown in Preliminary Plan No. 21/0027 in Attachment 1 to Report No. AR21/84957.
3. That Council authorise an upper limit of \$20,000 financial consideration (in addition to legal, administrative and reinstatement costs) for the acquisition by agreement of the land referenced in resolution 2.



4. The Chief Executive Officer and Mayor (as relevant) be authorised to execute and affix the Common Seal of the Council to any documentation necessary to give effect to a road process order, land acquisition or land division and financial settlement as envisaged by resolutions 2 and 3.

CONFIDENTIAL



## TYPE OF REPORT

Corporate

## BACKGROUND

At its meeting on 21 September 2021 Council resolved to commence a Road Process under the Roads (Opening and Closing) Act 1991 to acquire 505 m<sup>2</sup> of land located at 181 Pinehall Avenue to facilitate a road widening and upgrade of the O'Leary Road and Pinehall Avenue intersection.

It was further resolved that the Chief Executive Officer be authorised to negotiate with the owners of 181 Pinehall Avenue up to the value of \$12,000 to acquire the required land by agreement. This represented a 20% premium above the combined land valuation and disturbance compensation components as determined by an independent valuer.

Council's interest in acquiring the land was published by notice in the Government Gazette on 25 November 2021 commencing the statutory public consultation process which concluded on 24 December 2021. No objections were received by the Surveyor-General in relation to this proposal. Accordingly, this report includes a recommendation to make a Road Process Order to open road at this location in accordance with the preliminary plan (**Attachment 1**).

During this time, documentation was also forwarded to the landowner and their representatives with an offer to negotiate an agreement on the basis of the amount resolved by Council.

Shortly before the conclusion of the public consultation period, Council was contacted by the legal representative of the landowners for a 'without prejudice' conversation regarding their clients position, indicating that they would not accept the offer presented, but that they would be prepared to consider accepting one of the following two options;

- \$20,000 compensation for the land and disturbance, plus Council re-imbursing legal expenses and re-instatement of fencing and landscaping.
- or
- Council laying a bitumen seal for the entire length of their (approximately 110 metre long) driveway in addition to the \$12,000 offer and payment of legal expenses and reinstatement of fencing and landscaping.

## PROPOSAL

### Road Process Order

Having commenced the statutory process for a road opening process, and with no submissions received in relation to the public consultation, Council may now proceed to make a road process order to open portion of road at the corner of Pinehall Avenue and O'Leary Road, as shown in the preliminary plan (**Attachment 1**).

Next steps will be to finalise and lodge survey documentation for the road opening and for the Surveyor General to confirm the road opening process by notice in the SA government gazette, at which time Council will become the owner of the subject land as road.

### Land Acquisition - 181 Pinehall Road

Having received communication from the landowners legal representatives Council may consider both options presented on behalf of the landowner, noting:

- the estimated cost of bituminising the driveway being in the vicinity of \$8,000.00.
- risks (including safety/quality/warranty risks) associated with Council (or its contractors) undertaking works on private land
- likely costs associated with further valuation negotiations (including dispossessed landowners valuation estimate of \$5,000 plus disbursements), the cost of a conference between valuers to reconcile their differing valuations (if/as necessary)



- likely costs of court actions if agreement is not reached prior to lodgement of a valuation offer to the court for acquisition purposes
- and lastly, as acquiring authority Council, will be liable for all of the dispossessed landowners reasonably incurred costs/expenses (including legal) as well as relocation and reinstatement costs associated with perimeter fencing, driveway entrance, service meters and landscaping, and administrative costs (such as surveying, conveyancing etc)

It is not recommended that Council agree to the proposed driveway works, for the risk and cost liability reasons set out above. Rather, it is proposed that Council consider the increased monetary consideration proposed.

Whilst the proposed amount (\$20,000) represents a 100% increase to the independently determined valuation amount of \$10,000, noting the low value of the acquired land total costs could be expected to quickly exceed this amount where the matter is further drawn out with valuation reports and conferences, legal and possibly court fees. Even if the matter were determined favourably in court it is likely that Council, as acquiring authority, would be ordered to pay the reasonable costs of the dispossessed owner.

The benefits of accepting the \$20,000 offer to secure the land by agreement in a timely manner are considered to outweigh the costs/benefits of pursuing a lesser consideration amount.

Accordingly, this report recommends that Council increase its offer (subject to legal advice on the appropriate presentation of the offer) to the \$20,000 suggested, whilst reserving its right to lodge the lesser amount (\$10,000) to the court if an agreement is not formally agreed and documented prior.

## **LEGAL IMPLICATIONS**

In the case of a Road Process Order, as an acquiring authority Council must negotiate in good faith with the landowner in respect to compensation payable for the loss of land and any other loss relevant under the Land Acquisition Act 1969. The requirements of the Act are engaged upon the gazetted confirmation of Council's Road Process Order.

If agreement cannot be reached with the landowner, then Council must advise the landowner of the compensation amount offered and lodge that amount to the relevant Court and follow the steps set out in the Land Acquisition Act 1969.

## **STRATEGIC PLAN**

The Strategic Plan for the City of Mount Gambier outlines Council's commitment to;

### Goal 2 – Our Location

*2.1 Infrastructure development and managing our current assets.*

*2.1.1 Working with the community to ensure our CBD, health and education precincts, our streets and our public spaces are safe, inviting and support a positive image of the City of Mount Gambier.*

## **COUNCIL POLICY**

Council policy [Procurement and Disposal of Land and Assets P420](#) specifically excludes the purchase of land by Council, however the objectives of this policy are relevant to the proposed land acquisition, including making decisions with probity, accountability and transparency and ensuring compliance with all relevant legislation and enhancing value for money through fair, competitive, non-discriminatory procurement and disposal.

## **ECONOMIC IMPLICATIONS**

The economic implications for this proposal may vary significantly depending on whether prior agreement can be reached with the owners of the land, or if the matter proceeds to a compulsory land acquisition process and proceeds to court for determination.

Financial implications to Council include the value to purchase the land and costs associated with disturbance to the owners, engagement of a surveyor, conveyancer and lawyers to prepare and



lodge documentation, the re-instatement of perimeter fencing, services and associated landscaping, and any unavoidable costs that could arise in relation to the progression and finalisation of the matter.

The independent land value and compensation assessment provides for a total compensation to the owner in the amount of \$10,000. This amount does not include out-of-pocket and re-instatement expenses incurred by Council.

To achieve a timely solution Council resolved to authorise the Chief Executive Officer to negotiate a private purchase agreement to the value of \$12,000.

The request for Council to bituminise the driveway, approximately 110 metres in length, would incur significant costs in planning/engineering, resource allocation, liability risks associated with conducting works on privately owned land, and the possibility of any unforeseen problems that may arise as a result of the works. This has nominally been estimated at a lower limit of \$8,000.00.

\$20,000, sought by the landowner, is significantly more than the land and compensation value on a percentage basis, however Council must weigh this against the financial and time/resources associated with a legal dispute versus securing the land in a timely manner by agreement.

### **ENVIRONMENTAL IMPLICATIONS**

The proposal in this report is not considered to have any environmental implications.

### **SOCIAL IMPLICATIONS**

The proposal in this report is not considered to have any social implications.

### **CULTURAL IMPLICATIONS**

The proposal in this report is not considered to have any cultural implications.

### **RESOURCE IMPLICATIONS**

Apart from the resource implications for the proposed land acquisition being the purchase of the land and any costs associated with the disturbance of the owners, engagement of a surveyor and conveyancer to prepare and lodge documentation, the re-instatement of perimeter fencing and associated landscaping, moving of service meters etc.

Other resources are predominantly administrative in nature unless legal support is required for the compulsory land acquisition. The purpose of the proposal in this report is to achieve an agreement with the landowner to avoid such further legal and associated expenses.

The request for Council to bituminise the driveway would incur significant resource implications for Council with the use of Council staff, materials, and equipment, and with considerable risk relative to a financial solution.

### **VALUE FOR MONEY**

While Council has budgeted funds for land acquisition, it is beneficial that agreement can be reached with the owners of the land as the compulsory acquisition process will become more costly.

Council has identified the need to upgrade the intersection and the ability to secure the land in a timely manner must be considered along with the financial implications and lost time associated with a legal dispute with the landowner.

### **RISK IMPLICATIONS**

There are several risks associated with the proposals that the landowners have indicated that they would be willing to accept.

Legal advice would need to be sought prior to confirming an offer of \$20,000 for the land and disturbance to ensure that, in the event this matter does proceed to court, that this amount does not replace the determined amount of \$10,000 as the formal compulsory acquisition offer. Also noting other costs might increase significantly if further legal representation and court fees are required.



There are many risks involved in Council undertaking work on private land. The use of Council staff/contractors, equipment and materials, liability matters and any unforeseen issues that may arise as a result of work on private land may incur further unplanned resource and/or financial implications.

### **EQUALITIES AND DIVERSITY IMPLICATIONS**

The proposal in this report is not considered to have any implications relating to equality and diversity.

### **ENGAGEMENT AND COMMUNICATION STRATEGY**

Once Council has considered this matter and its position is clear, the Administration will advise the owners legal representative of the outcome to further negotiations. Legal advice may need to be sought prior to engaging further with the landowner and their legal representatives.

### **IMPLEMENTATION STRATEGY**

The Administration to seek further legal advice to support Council's position on the matter.

If agreement cannot be reached, Council will re-advise of the compensation offer to be lodged to the relevant Court under the Land Acquisition Act 1969.

### **CONCLUSION AND RECOMMENDATION**

That Council consider all of the risks and benefits associated with the two options that the landowners legal representatives have indicated that they would be prepared to accept as compensation for the land and disturbance, against the risks associated with the compulsory land acquisition process.

Council must weigh up the financial implications and lost time/resources associated with a continuing legal and court dispute versus securing the land in a timely manner.

If Council choose to accept the proposal of \$20,000 for the land and disturbance, further legal advice be sought prior to advising the landowner in the event that the matter may proceed to court.

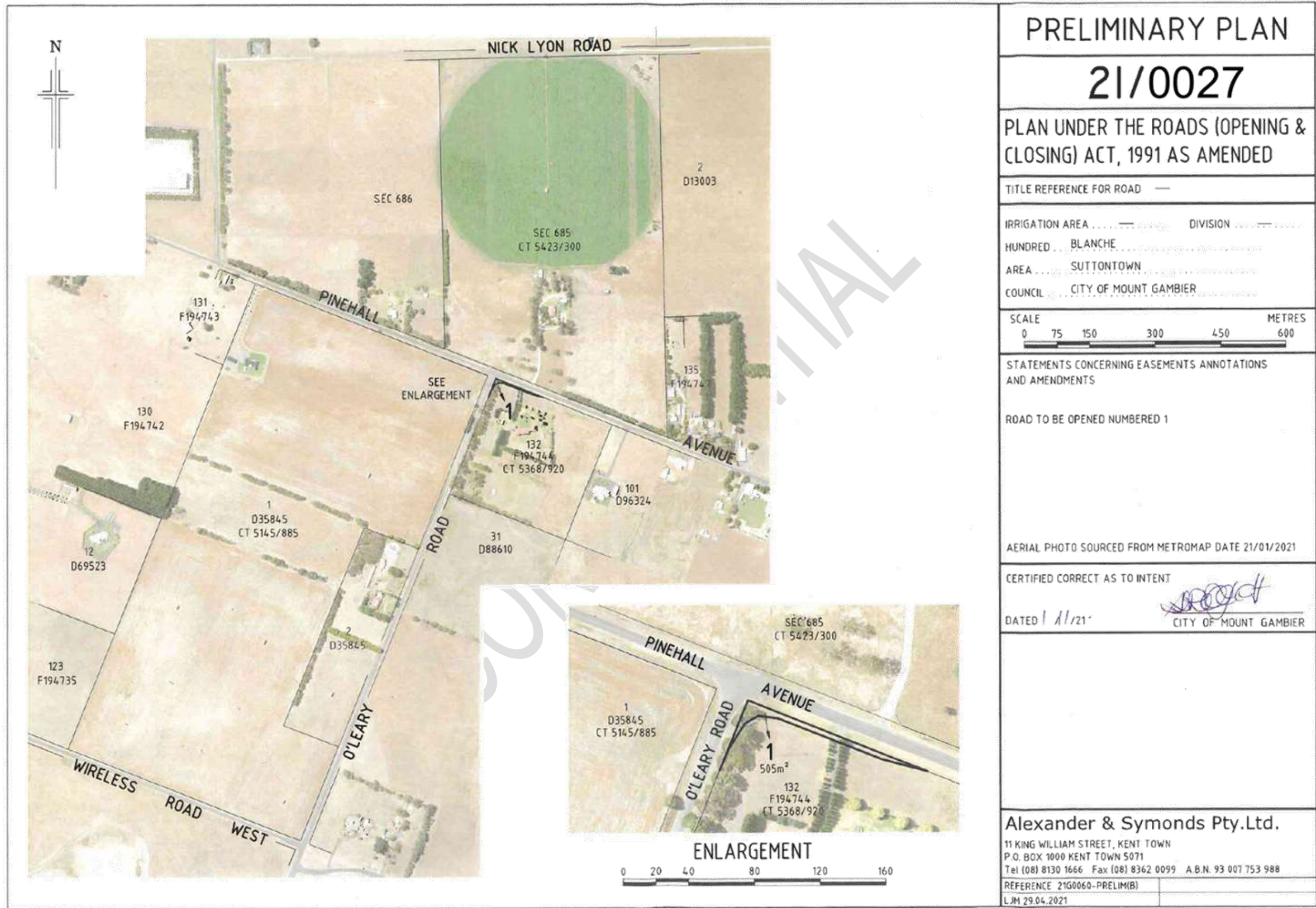
That the risks associated with Council or its contractors undertaking work on private land are too indeterminate to be considered an appropriate option.

### **ATTACHMENTS**

1. Signed Preliminary Plan - 21/0027 - Road Opening Process - 181 Pinehall Avenue, Suttontown  
[↓](#)







**CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL**

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 26.1 AR21/84957 Road Opening Process - Pinehall Avenue/O'Leary Road, Suttontown and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b), (d) and (i) be kept confidential and not available for public inspection until the acquisition of the subject land has been settled and any court actions finalised.
2. Further that Council delegates the power to review, revoke, but not extend the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CONFIDENTIAL

**MINUTES OF CITY OF MOUNT GAMBIER COUNCIL MEETING  
HELD VIRTUALLY FROM THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE,  
MOUNT GAMBIER  
ON TUESDAY, 18 JANUARY 2022 AT 6.00 P.M.**

**VIRTUAL MEETING WAS AVAILABLE FOR LIVE STREAMING,  
<https://www.youtube.com/user/CityOfMountGambier/live>**

**PRESENT:** Mayor Lynette Martin (OAM), Cr Sonya Meziniec, Cr Kate Amoroso, Cr Max Bruins, Cr Christian Greco, Cr Paul Jenner, Cr Frank Morello, Cr Steven Perryman

**OFFICERS IN ATTENDANCE:**

Chief Executive Officer	- Mrs S Philpott
General Manager City Infrastructure	- Ms B Cernovskis
General Manager Corporate and Regulatory Services	- Mr D Barber
General Manager City and Community Growth	- Mr T Coote
Manager Governance and Property	- Mr M McCarthy
Media and Communications Coordinator	- Ms S McLean
iServices Systems Administrator	- Mr A Myers
Executive Administrator	- Ms T Chant

## **26 NEW CONFIDENTIAL ITEMS**

### **26.1 ROAD OPENING PROCESS - PINEHALL AVENUE/O'LEARY ROAD, SUTTONTOWN - REPORT NO. AR21/84957**

#### **RESOLUTION 2022/1**

Moved: Cr Max Bruins  
Seconded: Cr Sonya Meziniec

#### **CONSIDERATION FOR EXCLUSION OF THE PUBLIC**

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except the Mayor, Councillors and (Council Officers) be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.1 AR21/84957 Road Opening Process - Pinehall Avenue/O'Leary Road, Suttontown.

The Council is satisfied that, pursuant to section 90(3) (a), (b), (d) and (i) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is:

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  - conducting business; or
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  - to prejudice the commercial position of the Council



- commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
  - to prejudice the commercial position of the person who supplied the information, or
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- information relating to:
  - actual litigation, or
  - litigation that the Council or Council committee believes on reasonable grounds will take place,
  - involving the Council or an employee of the Council

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the information considered relates to the valuation and compulsory acquisition of land for road opening purposes for which an agreement is yet to be reached and it is reasonably considered may result in litigation.

**CARRIED**

#### **RESOLUTION 2022/2**

Moved: Cr Max Bruins  
Seconded: Cr Paul Jenner

1. That Council Report No. AR21/84957 titled 'Road Opening Process - Pinehall Avenue/O'Leary Road, Suttontown' as presented on 18 January 2022 be noted.
2. That, no submissions or objections having been received, a Road Process Order be made and a Final Plan prepared to open as road a 505 m<sup>2</sup> portion of 181 Pinehall Avenue, Suttontown being portion of Allotment 132 in Filed Plan 194744 contained in Certificate of Title Volume 5368 Folio 920 as shown in Preliminary Plan No. 21/0027 in Attachment 1 to Report No. AR21/84957.
3. That Council authorise an upper limit of \$20,000 financial consideration (in addition to legal, administrative and reinstatement costs) for the acquisition by agreement of the land referenced in resolution 2.
4. The Chief Executive Officer and Mayor (as relevant) be authorised to execute and affix the Common Seal of the Council to any documentation necessary to give effect to a road process order, land acquisition or land division and financial settlement as envisaged by resolutions 2 and 3.

**CARRIED**

#### **RESOLUTION 2022/3**

Moved: Cr Max Bruins  
Seconded: Cr Sonya Mezinac

#### **CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL**

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 26.1 AR21/84957 Road Opening Process - Pinehall Avenue/O'Leary



Road, Suttontown and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b), (d) and (i) be kept confidential and not available for public inspection until the acquisition of the subject land has been settled and any court actions finalised.

2. Further that Council delegates the power to review, revoke, but not extend the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

**CARRIED**