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

**Date: Tuesday, 21 September 2021**  
**Time: 6.00 p.m.**  
**Location: Council Chamber**  
**Civic Centre**  
**10 Watson Terrace**  
**Mount Gambier**

# **CONFIDENTIAL AGENDA**

**Council Meeting**  
**21 September 2021**

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

**Sarah Philpott**  
**Chief Executive Officer**  
**17 September 2021**

## 27.2 PINEHALL AVENUE / O'LEARY ROAD UPGRADE – REPORT NO. AR21/53178

### 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 27.2 AR21/53178 Pinehall Avenue / O'Leary Road Upgrade.

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 to be considered relates to the valuation and compulsory acquisition of land for road opening purposes for which the owner is yet to engage in negotiations and it is reasonably considered will result in litigation.

**27.2 PINEHALL AVENUE / O'LEARY ROAD UPGRADE – REPORT NO. AR21/53178**

<b>Committee:</b>	<b>Council</b>
<b>Meeting Date:</b>	<b>21 September 2021</b>
<b>Report No.:</b>	<b>AR21/53178</b>
<b>CM9 Reference:</b>	<b>AF13/64</b>
<b>Author:</b>	<b>Michael McCarthy, Manager Governance and Property</b>
<b>Authoriser:</b>	<b>Sarah Philpott, Chief Executive Officer</b>
<b>Summary:</b>	<b>This report provides an update and recommends that previous resolutions relating to the road opening and land acquisition processes for the Pinehall Avenue / O'Leary Road intersection be revoked, with a subsequent report presenting updated information.</b>
<b>Strategic Plan Reference:</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. AR21/53178 titled 'Pinehall Avenue / O'Leary Road Upgrade' as presented on 21 September 2021 be noted.
2. Pursuant to Regulation 21 of the Local Government (Procedures at Meetings) Regulations the Chief Executive Officer recommends that:
  - (a) parts 2-8 of resolution 2021/92 dated 20 April 2021, and;
  - (b) part 2 of resolution 2021/147 dated 15 June 2021,be revoked.



## TYPE OF REPORT

Corporate

## BACKGROUND

At its meeting held on 20 April 2021, in relation to Report No. AR21/12277 for a compulsory land acquisition of a portion of 181 Pinehall Avenue, Suttontown, Council resolved the following:

### **“RESOLUTION 2021/92**

Moved: Cr Max Bruins

Seconded: Cr Christian Greco

1. That People and Place Committee Report No. AR21/12277 titled ‘Road Opening Process - Pinehall Avenue’ as presented on 06 April 2021 be noted.
2. That Council proposes to commence a Road Process under the Roads (Opening and Closing) Act 1991 to open as road a 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 Attachment 1 to Report No. AR21/12277.
3. The Chief Executive Officer be authorised to implement the provisions of the Roads (Opening and Closing) Act 1991 and Land Acquisition Act 1969 as necessary to commence the proposed road opening process, including the preparation of a preliminary plan and statement of persons affected, and relevant notices of the proposed road process.
4. The Chief Executive Officer be authorised to negotiate with the owners of 181 Pinehall Avenue, Suttontown up to the value of \$15,000 to acquire the required land by agreement.
5. The Chief Executive Officer be authorised to have prepared and lodged any necessary surveying and documentation for the road opening as presented in Report AR21/12277.
6. A further report be presented to Council to consider any objections to the proposed road opening and the making of a Road Process Order.
7. In the event that no objections are received, the Chief Executive Officer and Mayor be authorised to make a Road Process Order and to prepare a Final Plan to open road over that portion of Allotment 132 in Filed Plan 194744 situated at 181 Pinehall Avenue, Suttontown as shown in Attachment 1 to Report No. AR21/12277.
8. The Mayor and Chief Executive Officer be authorised to affix the Common Seal to any documentation necessary to give effect to and protect Council’s interests in a land division, road opening or land acquisition for the road opening as presented in Report AR21/12277.

**CARRIED”**

Following this, at its meeting held on 15 June 2021 in relation to Report No. AR21/28521 due to an updated valuation report, Council resolved the following:

### **“RESOLUTION 2021/147**

Moved: Cr Frank Morello

Seconded: Cr Christian Greco

1. That People and Place Committee Report No. AR21/28521 titled ‘Road Opening Process - Pinehall Avenue’ as presented on 07 June 2021 be noted.
2. That,
  - having considered Report No. AR21/28521 Council confirms part 4 of resolution 2021/92 dated 20 April 2021 that the Chief Executive Officer be authorised to negotiate with the owners of 181 Pinehall Avenue, Suttontown up to the value of \$10,000 to acquire the required land by agreement.



***CARRIED***

Following these decisions, and prior to actioning them, it became apparent that the design on which the reports and previous valuation reports had been based was not final and the proposed land acquisition size has now increased.

**PROPOSAL**

In order to move forward with this matter Council must resolve to commence a road process for the acquisition of the amended land area.

A separate report follows this agenda item to address the making of a new Road Process Order.

To minimise any potential complications and enable Council to make new resolutions this report presents a recommendation of the Chief Executive Officer under Regulation 21 of the Local Government (Procedures at Meetings) Regulations 2013 that the resolutions associated with the March and June reports relating to this matter be revoked.

**LEGAL IMPLICATIONS**

The legal implications associated with this proposal relate to the necessary revocation (or amendment) of a previously resolved decision of Council before an alternate decision can be made.

Regulation 21 of the Local Government (Procedures at Meetings) Regulations 2013 provides that the Chief Executive Officer may submit a report to the Council recommending the revocation or amendment of a resolution passed since the last general election of the Council.

In the absence of a report under Regulation 21 or a Motion With Notice under Regulation 12(3) to revoke or amend a resolution) Council may not progress an alternate road process and acquisition for the subject land at 181 Pinehall Avenue, Suttontown.

**STRATEGIC PLAN**

N/A

**COUNCIL POLICY**

N/A

**ECONOMIC IMPLICATIONS**

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

**ENVIRONMENTAL IMPLICATIONS**

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

**SOCIAL IMPLICATIONS**

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

**CULTURAL IMPLICATIONS**

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

**RESOURCE IMPLICATIONS**

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

**VALUE FOR MONEY**

The proposal in this report is purely administrative and has no monetary value.

**RISK IMPLICATIONS**

The risk in this specific matter is that there is already a resolved decision of Council, and conflicting information and plans in relation to this matter.

The reason for this report is to mitigate the risk of any confusion by revoking all previous resolutions and re-presenting a new report in full with all relevant details associated with the land acquisition.



### **EQUALITIES AND DIVERSITY IMPLICATIONS**

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

### **ENGAGEMENT AND COMMUNICATION STRATEGY**

Council will re-engage with the owner of the subject land via their legal representative to seek agreement with respect to the value and transfer of the land, disturbance caused and re-instatement of the property boundary.

### **IMPLEMENTATION STRATEGY**

The proposal in this report is purely administrative in nature and the rescission of the previous Council resolutions will simplify the formalities associated with presenting a new report in its entirety.

### **CONCLUSION AND RECOMMENDATION**

In light of the increased area for the proposed land acquisition and updated market valuation report received on 20 August 2021, this report recommends that Council consider revoking the relevant parts of resolution 2021/92 dated 20 April 2021 and resolution 2021/147 dated 15 June 2021.

A subsequent report follows including all current information to commence a new road process.

### **ATTACHMENTS**

Nil

CONFIDENTIAL



**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 27.2 AR21/53178 Pinehall Avenue / O'Leary Road Upgrade 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

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**MINUTES OF CITY OF MOUNT GAMBIER COUNCIL MEETING  
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE,  
MOUNT GAMBIER ON TUESDAY, 21 SEPTEMBER 2021 AT 6.00 P.M.**

**PRESENT:** Mayor Lynette Martin (OAM), Cr Kate Amoroso, Cr Max Bruins, Cr Christian Greco, Cr Ben Hood, Cr Paul Jenner, Cr Frank Morello, Cr Steven Perryman (arrived at 6.02 p.m.)

**OFFICERS IN ATTENDANCE:**

Chief Executive Officer	- Mrs S Philpott
General Manager City Infrastructure	- Ms B Cernovskis
General Manager Shared Services	- Mr D Barber
General Manager City Growth	- Mr T Coote
Acting General Manager Community Wellbeing	- Mrs G Davison
Manager Governance and Property	- Mr M McCarthy
Procurement Officer	- Mrs L Hinton
Manager Finance	- Mrs J Scoggins
Manager Waste and Reuse	- Mr M McDonald
Media and Communications Coordinator	- Ms S McLean
Councillor Support Officer	- Mrs M Telford
Executive Administrator City Growth	- Ms T Chant



**RESOLUTION 2021/292**

Moved: Cr Christian Greco

Seconded: Cr Frank Morello

**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 S Philpott, B Cernovskis, D Barber, T Coote, G Davison, S McLean, M McCarthy, L Hinton, M McDonald, J Scoggins, M Telford and T Chant be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 27.2 AR21/53178 Pinehall Avenue / O'Leary Road Upgrade.

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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  - 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 to be considered relates to the valuation and compulsory acquisition of land for road opening purposes for which the owner is yet to engage in negotiations and it is reasonably considered will result in litigation.

**CARRIED**

### **RESOLUTION 2021/293**

Moved: Cr Frank Morello

Seconded: Cr Paul Jenner

1. That Council Report No. AR21/53178 titled 'Pinehall Avenue / O'Leary Road Upgrade' as presented on 21 September 2021 be noted.
2. Pursuant to Regulation 21 of the Local Government (Procedures at Meetings) Regulations the Chief Executive Officer recommends that:
  - (a) parts 2-8 of resolution 2021/92 dated 20 April 2021, and;
  - (b) part 2 of resolution 2021/147 dated 15 June 2021,be revoked.

**CARRIED**

### **RESOLUTION 2021/294**

Moved: Cr Max Bruins

Seconded: Cr Ben Hood

#### **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 27.2 AR21/53178 Pinehall Avenue / O'Leary Road Upgrade 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**

