



Civic Centre, 10 Watson Terrace
Mount Gambier SA 5290

PO Box 56
Mount Gambier SA 5290

Telephone 08 87212555
Facsimile 08 87249791
city@mountgambier.sa.gov.au

mountgambier.sa.gov.au

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

27.3 ROAD OPENING PROCESS - PINEHALL AVENUE / O'LEARY ROAD – REPORT NO. AR21/39329

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 27.3 AR21/39329 Road Opening Process - Pinehall Avenue / O'Leary Road.

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.

27.3 ROAD OPENING PROCESS - PINEHALL AVENUE / O'LEARY ROAD – REPORT NO. AR21/39329

Committee:	Council
Meeting Date:	21 September 2021
Report No.:	AR21/39329
CM9 Reference:	AF13/64
Author:	Elisa Solly, Property Support Officer
Authoriser:	Darren Barber, General Manager Shared Services
Summary:	This report presents updated land requirements for a proposed road opening and land acquisition process for the Pinehall Avenue and O'Leary Road intersection.
Strategic Plan Reference:	Goal 1: Our People Goal 2: Our Location Goal 3: Our Diverse Economy Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage Goal 5: Our Commitment

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. AR21/39329 titled 'Road Opening Process - Pinehall Avenue / O'Leary Road' as presented on 21 September 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 505m² 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. AR21/39239.
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 \$12,000 to acquire the required land by agreement.
5. The Chief Executive Officer and Mayor (as relevant) be authorised to execute and affix the Council Seal to any documentation necessary to give effect to a road process, land acquisition or land division envisaged by resolutions 2, 3 and 4.

Type of Report

Corporate

BACKGROUND

Council has identified a need to upgrade the intersection of O'Leary Road and Pinehall Avenue, Suttontown as presented in previous reports to the April, June and this Council meeting relating to a proposed road opening and land acquisition for portion of 181 Pinehall Avenue, Suttontown,

As noted in the preceding report following Council's most recent resolution in this matter and prior to actioning the decision it became apparent that the design on which the earlier reports and market valuation were based was not final and the land required for the intersection upgrade has consequently increased in size.

To facilitate the upgrade of the Pinehall Avenue and O'Leary Road intersection it is now necessary to acquire approximately 505m² of the property situated at 181 Pinehall Avenue, Suttontown as shown in Attachment 1.

The subject property is located on the southern side of Pinehall Avenue and the eastern side of O'Leary Road. The intended acquisition land is irregular in shape comprising a strip of land along the north western corner of the site, extending 60.1 metres along O'Leary Road and 118.6 metres along Pinehall Avenue.

The land to be acquired comprises lawn, established trees, portion of the subject property's driveway and front perimeter fence. It may also necessitate relocation of electricity and gas meters however until surveyed and marked onsite this is unable to be confirmed.

An updated valuation report has been obtained based upon the new boundary plan and acquisition requirements.

As presented in the preceding report, it was recommended that Council revoke its previous resolutions in relation the unactioned road process and acquisition to enable the recommendations in this report to be considered.

PROPOSAL

It is proposed that Council acquire an approximately 505m² portion of land located at 181 Pinehall Road to facilitate a road widening and upgrade of the O'Leary Road and Pinehall Avenue intersection as shown in the plan at Attachment 1.

In the absence of an agreement with the affected property owner it is proposed that processes be commenced under the Roads (Opening and Closing) Act 1991 and Land Acquisition Act 1969 to open road over the subject land and that notice be given that Council intends to compulsorily acquire the required portion for the purpose of upgrading the O'Leary Road and Pinehall Avenue intersection.

Council will be responsible for the re-instatement costs associated with the land acquisition including the relocation of perimeter fencing, driveway and any service meters, landscaping, and all costs associated with surveying and conveyancing to prepare and lodge necessary documentation as well as any costs that might arise from a legal dispute with regard to the acquisition or land valuation.

Council officers will continue to pursue an agreement with the property owner, however the formal acquisition process provides a degree of certainty in achieving an outcome in a timely manner.



LEGAL IMPLICATIONS

The provisions of the Roads (Opening and Closing) Act 1991 enable Council to commence a Road Process to open portions of privately owned land as road. A process commenced under this Act enables notification to be made on the land and the owner of an intention to compulsorily acquire land, enabling the protection of Council's interest including by registration of a caveat on the land.

At the same time Council may negotiate a private agreement with the property owner to enable the creation of road by land division or the commenced Road Process. Council will be required to consider any objections to the road process prior to making a Road Process Order.

Legal interest in the subject land will vest with Council as road upon the deposit of a plan of division or the gazetted confirmation of the Road Process Order.

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 has not been reached at that point, 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 significantly vary depending on whether prior agreement can be reached with the owners of the land, or if the matter requires the compulsory land acquisition process to be invoked and proceeds to the relevant court for determination.

Financial implications to Council will include the purchase of the land and any costs associated with the disturbance to the owners, engagement of a surveyor and conveyancer to prepare and lodge documentation, the re-instatement of perimeter fencing and associated landscaping, and any unavoidable legal 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.

In the interests of achieving a timely solution it is recommended Council Officers be authorised to negotiate a private purchase agreement to the value of \$12,000 (or such other amount as endorsed by Council) if the road opening can be achieved by way of a land division by agreement.

Should it be necessary to invoke the full compulsory land acquisition provisions associated with both the Roads (Opening and Closing) Act 1991 and Land Acquisition Act 1969 then the formal offer for submission to the relevant Court would be the \$10,000 as independently determined by a Valuer. Council might expect to incur further legal and valuation costs if this course of action ensues.



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

Apart from the identified 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 would be predominantly administrative in nature unless legal support is required for the compulsory land acquisition.

VALUE FOR MONEY

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

RISK IMPLICATIONS

Council has identified the need for an upgrade of this intersection. Whilst the risk associated with the compulsory land acquisition process is real and may be preferable to avoid, this must also be balanced against the safety risks associated with the intersection upgrade.

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

Council will negotiate with the owner of the subject land to reach a private agreement with respect to the value and transfer of the land, disturbance caused and re-instatement of the boundary.

IMPLEMENTATION STRATEGY

Council commence a Road Process under the Roads (Opening and Closing) Act 1991 to open a portion of the subject land as road while concurrently negotiating an agreement with the property owner to either create the road by land division or continue the commenced Road Process.

If an agreement cannot be reached, the Council advise the landowner of the compensation offered to them and lodge that amount to the relevant Court under the Land Acquisition Act 1969.

CONCLUSION AND RECOMMENDATION


Council have identified a need for an upgrade of the intersection of Pinehall Avenue and O'Leary Road. To achieve this it is proposed that Council acquire approximately 505 m² of privately owned land situated at 181 Pinehall Avenue, Suttontown.

This report recommends that Council commence a Road Process under the Roads (Opening and Closing) Act 1991 and the Land Acquisition Act 1969 to enable the land to be put on notice in a manner of an intention to compulsorily acquire the land for the purpose of widening of the road.

This report also recommends that Council concurrently negotiate with the property owners to reach a private agreement for the creation of road by land division that would include compensation for the value of the land, disturbance caused, and the re-instatement of associated fencing and landscaping.

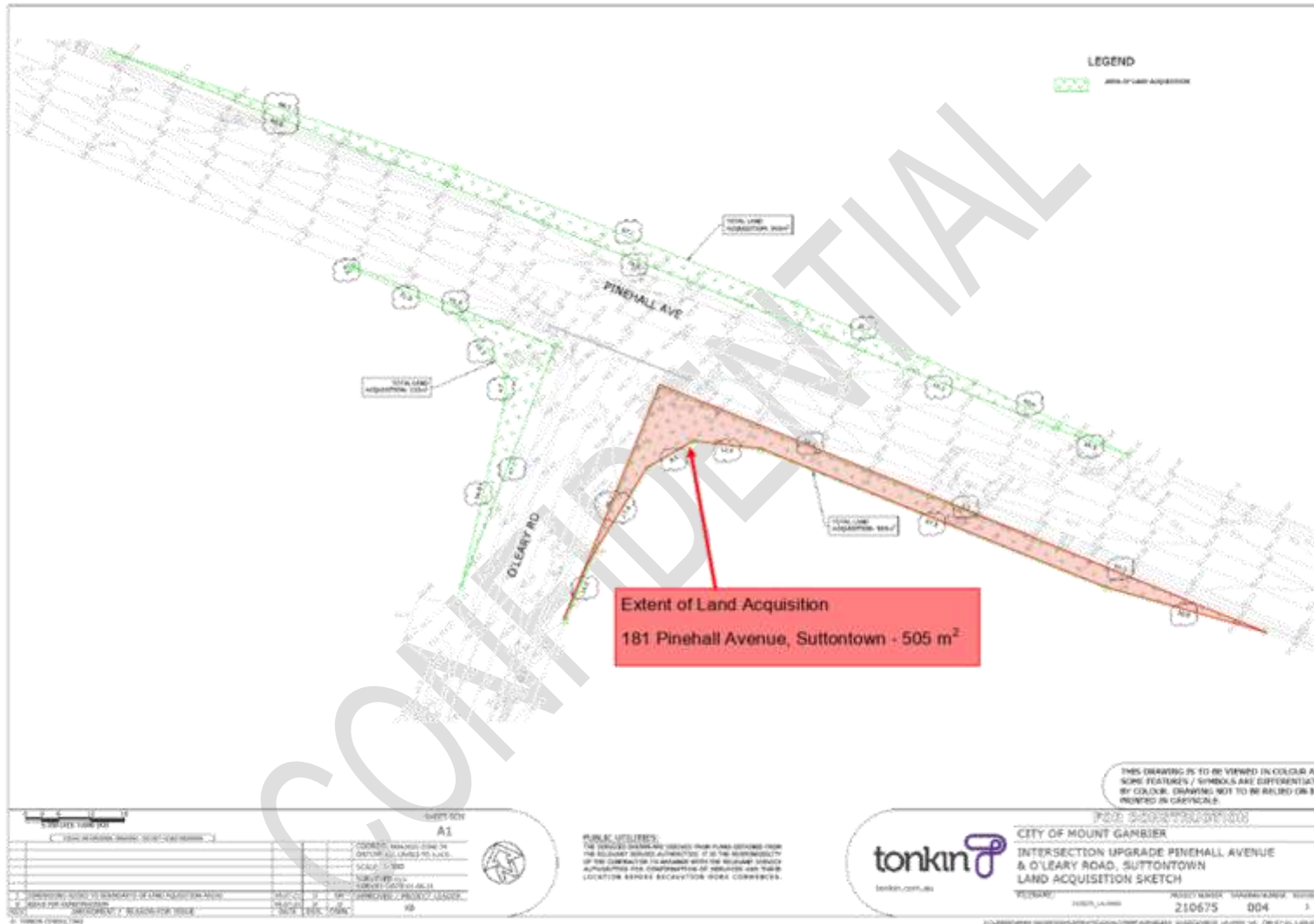


ATTACHMENTS

1. Extent of Land Acquisition - 181 Pinehall Avenue, Suttontown [↓](#) 

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 27.3 AR21/39329 Road Opening Process - Pinehall Avenue / O'Leary Road 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 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

27.3 ROAD OPENING PROCESS - PINEHALL AVENUE / O'LEARY ROAD – REPORT NO. AR21/39329

RESOLUTION 2021/295

Moved: Cr Ben Hood

Seconded: Cr Paul Jenner

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 27.3 AR21/39329 Road Opening Process - Pinehall Avenue / O'Leary Road.

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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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 2021/296

Moved: Cr Steven Perryman
Seconded: Cr Paul Jenner

1. That Council Report No. AR21/39329 titled 'Road Opening Process - Pinehall Avenue / O'Leary Road' as presented on 21 September 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 505m² 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. AR21/39239.
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4. The Chief Executive Officer be authorised to negotiate with the owners of 181 Pinehall Avenue, Suttontown up to the value of \$12,000 to acquire the required land by agreement.
5. The Chief Executive Officer and Mayor (as relevant) be authorised to execute and affix the Council Seal to any documentation necessary to give effect to a road process, land acquisition or land division envisaged by resolutions 2, 3 and 4.

CARRIED

RESOLUTION 2021/297

Moved: Cr Ben Hood
Seconded: Cr Christian Greco

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 27.3 AR21/39329 Road Opening Process - Pinehall Avenue / O'Leary Road 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

