

OFFICE OF THE CHIEF EXECUTIVE OFFICER

Possible discontinuance and possible sale of part of Andrew Fairley Avenue, Shepparton

**Greater Shepparton City Council
Ordinary Report**

Report to: The Special Committee established to hear submissions under Section 223 of the *Local Government Act 1989*

Date of meeting: Tuesday, 27 May 2014

From: Office of the Chief Executive Officer

Subject: **Possible discontinuance and possible sale of part of Andrew Fairley Avenue, Shepparton**

Disclosures of conflicts of interest in relation to advice provided in this report

Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Executive Summary

This Special Committee was established by the resolution of the Council on 18 March 2014.

The purpose of the Special Committee is to hear submissions made under section 223 of the *Local Government Act 1989* (Act) in relation to the proposal to discontinue the Road and sell the Road to SPC Ardmona Limited (SPCA), or a subsidiary of SPCA (Proposal).

The Special Committee must provide a report on its proceedings, including a summary of hearings, to the Council.

Two public notices were published giving notice of the Proposal to the community on 21 March 2014 and 23 April 2014. The Second Public Notice effectively extended the closing date for submissions to midnight on Thursday, 22 May 2014.

At the time of signing this report, over 1,200 submissions have been received by the Council, including a number of petitions. The reason specific numbers have not been provided, is that submissions will continue to be accepted and collated right up until the provision of this report to the Special Committee.

A summary of the submissions is provided at Attachment G.

A copy of each submission is provided at Attachment H.

A large number of the submissions include a request to appear in person, or to be represented by a person, at a meeting, to be heard in support of the submission.

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A meeting of the Special Committee is to be held on Tuesday, 27 May 2014, commencing at 1:00 pm, for the purpose of hearing persons who wish to be heard in support of their submission. If inadequate time is available on the 27 May 2014, the meeting will be adjourned to a day or days following the 27 May 2014.

Local Law No. 2, *Processes of Local Government (Meetings and Common Seal)*, regulates the procedure of any meeting and any reporting to be carried out by the Special Committee.

Background

By a letter, dated 14 February 2014, SPCA made the following request of the Council.

“SPC Ardmona (SPCA) has received co-investment from the Victorian State Government and Coca-Cola Amatil (CCA) to spend a combined \$100m to upgrade the Shepparton facility.

We now request the Great Shepparton City Council to give consideration to the request that Andrew Fairly Avenue is closed and granted to SPCA as the additional land is critical to the efficient upgrade of the facility.”

At the Ordinary meeting of the Council on 18 March 2014 the following resolution was carried.

“That the Council:

- 1. In accordance with the provisions of section 206 and clause 3 of schedule 10 of the Local Government Act 1989, give public notice of its intention to close Andrew Fairley Avenue between the intersection of Railway Parade and Hawdon Street west of the Seymour –Tocumwal Railway reserve and intersection of Adams Avenue Shepparton and sell the surplus land to SPCA (refer attached plan).*
- 2. Provide a copy of the notice to all relevant infrastructure authorities.*
- 3. Form a committee of “the whole” to:*
 - a. consider submissions on the proposed closure with submissions closing at 5.00pm on Monday 21 April 2014; and*
 - b. hold a meeting of “the whole” to hear submissions on the proposed closure at 5:30pm on Tuesday 29 April 2014.*
- 4. Appoint the Chief Executive Officer to administer the process.”*

The Road

The Road is approximately 3,963m² in area and is coloured peach, pink and yellow within the continuous bold black line on the plan provided at Attachment A.

The Road is a collector road under the management and control of the Council.

An aerial photograph of the Road and its surrounds is provided at Attachment B.

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Relevant Powers of the Council

Section 206(1) of the Act provides that the powers of the Council in relation to roads in its municipal district include the powers set out in Schedule 10 of the Act.

Clause 3 of Schedule 10 of the Act is set out below.

“Power to discontinue roads

A Council may, in addition to any power given to it by sections 43 and 44 of the Planning and Environment Act 1987 —

- (a) discontinue a road, or part of a road, by a notice published in the Government Gazette; and*
- (b) sell the land from that road (if it is not Crown land), transfer the land to the Crown or itself or retain the land.”*

Section 223 Submission Process

Section 207A(a) of the Act provides that a person may make a submission under section 223 of the Act on the proposed exercise of any power under, amongst other things, clause 3 of Schedule 10 of the Act.

Section 223 of the Act is set out below:

“Right to make submission

- 1) The following provisions apply if a person is given a right to make a submission to the Council under this section (whether under this or any other Act):*
 - (a) the Council must publish a public notice:*
 - (i) specifying the matter in respect of which the right to make a submission applies*
 - (ii) containing the prescribed details in respect of that matter*
 - (iii) specifying the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published*
 - (iv) stating that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission*

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- (b) *if a request has been made under paragraph (a)(iv), the Council must:*
- (i) *provide the person with the opportunity to be heard in support of the submission in accordance with the request at a meeting of the Council or of a committee determined by the Council*
 - (ii) *fix the day, time and place of the meeting*
 - (iii) *give reasonable notice of the day, time and place of the meeting to each person who made a request*
- (c) *If the committee determined under paragraph (b)(i) is not responsible for making the decision in respect of which the submissions have been made, the committee must provide a report on its proceedings, including a summary of hearings, to the Council or the special committee which is responsible for making the decision:*
- (d) *the Council or special committee responsible for making the decision must:*
- (i) *consider all the submissions made under this section and any report made under paragraph (c)*
 - (ii) *notify in writing, each person who has made a separate submission, and in the case of a submission made on behalf of a number of persons, one of those persons, of the decision and the reasons for that decision.*
- (2) *If a proposal by the Council involves the exercise of powers at the same time under more than one section giving a right to make a submission and written submissions are received under more than 1 of those sections the submission procedure may be carried out in respect of all the written submissions at the same time.*
- (3) *Despite section 98, a Council may authorise the appropriate members of Council staff to carry out administrative procedures necessary to enable the Council to carry out its functions under this section.*
- (4) *A member of a committee specified in subsection (1)(b)(i) is subject to section 79 as if that member were a member of a special committee.”*

Two public notices were published giving notice of the Proposal to the community.

The First Public Notice was published in the Shepparton News on 21 March 2014. A copy of the First Public Notice is provided at Attachment C. The First Public Notice provided that the closing date for submissions was Monday, 21 April 2014.

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The Second Public Notice was published in the Shepparton News on 23 April 2014.

A copy of the Second Public Notice is provided at Attachment D. The Second Public Notice provided that the closing date for submissions was at midnight on Thursday, 22 May 2014.

The Second Public Notice also gave notice of the meeting of the Special Committee scheduled to commence at 1:00pm on Tuesday, 27 May 2014.

All submissions received in relation to either notice are being treated as submissions in respect of the Proposal under section 223 of the Act.

Further notice of the Special Committee meeting appeared in the Shepparton News on Tuesday, 20 May 2014.

A copy of the 'standard' letter sent to submitters initially, for the purpose of confirming receipt of their submission, is provided at Attachment E.

Subsequently, three alternative 'standard' letters were prepared by the Council to be sent to submitters. The three versions of this 'standard' letter accounted for whether:

1. the submitter had requested to be heard, in which case the submitter was asked to telephone Council to confirm they wished to speak;
2. the submission did not contain a request to speak. The letter contained acknowledgement of the submission and notification of the meeting;
3. the name on the submission was illegible, in which case the submitter was asked to provide their legible name.

A copy of each of the three 'standard' letters is provided at Attachment F.

At the time of signing this report, over 1,200 submissions have been received by the Council, including a number of petitions. The reason specific numbers have not been provided, is that submissions will continue to be accepted and collated right up until the provision of this report to the Special Committee

A summary of the submissions is provided at Attachment G.

A copy of each submission is provided at Attachment H.

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Outline of the Submissions

Submissions received can generally be divided into two categories, namely:

1. submissions against the Proposal
2. submissions in support of the Proposal

At the time of signing this report, over 1,000 submissions have been received by the Council against the Proposal. A number of these submissions against the Proposal appear to have been prepared using 'template' that is 'pro forma', documents, albeit with slight variations and additional comments amongst them.

A summary of the key themes and issues raised by the submissions against the Proposal is set out below.

1. SPCA has not provided detailed information justifying why the Road must be closed.
2. SPCA should identify an alternative solution and use its resources more efficiently. Alternative engineering solutions are available, including redesign of the proposed building, expansion of SPCA onto other land, realigning the Road further to the north, the construction of an underpass or overpass.
3. The closure of the Road will not make SPCA viable.
4. SPCA has already, previously received enough charity, including land, from the community.
5. There is insufficient information to make a proper, fully informed decision.
6. Traffic, economic and social impact assessments have not been carried out and any decision on the Proposal is premature.
7. The Road is a vital east-west access connection for Shepparton and used by many sectors of the community on a daily basis. The closure of the Road would be inconvenient for many sectors of the community.
8. The closure of the Road would effectively divide Shepparton and cut off the land to the east.
9. The closure of the Road will have a detrimental impact on surrounding residents and businesses and parts of the community and economy.
10. It is inconsistent with proper planning principles to close the Road, as the Road is required for public use.
11. The Proposal will bring more large trucks into Shepparton.
12. Closing the Road is a poor decision for the interests of one business. The Council must ensure that road and traffic conditions are effective for all residents and businesses.

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13. The closure of the Road will increase cost, delay and inconvenience to many residents and local businesses, making these businesses uncompetitive and less viable. It will also reduce passing trade to local businesses. This will have a significant cumulative impact for the Shepparton community and economy.
14. The closure of the Road will devalue land, including land in the vicinity of the Road.
15. The Road is public land and should not be discontinued and sold to a private company for private purposes.
16. The closure of the Road will cause the redistribution of a significant number of vehicles, estimated to be in the order of 7,000 to 8,000 vehicles, on to other roads that are already congested and prone to traffic delays. This will cause significant traffic congestion.
17. The closure of the Road will have lasting structural implications for the infrastructure of Shepparton.
18. The closure of the Road is contrary to, and inconsistent with, Council's policies and strategies.
19. The process, and the Proposal, is legally defective, unlawful and invalid. The Proposal should be abandoned.
20. Additional time is required, up to 3 months, to lodge submissions. The process is misleading and dishonest.
21. The closure of the Road is a permanent measure and longer term planning and future growth and development will be reduced and undermined. Such longer term outcomes should not be undermined by such a short term solution.
22. The Road is required by emergency service vehicles and emergency response times will increase if the Road is closed.
23. Other roads will be made unsafe if the Road is closed.
24. Alternative routes are problematic and unsafe due to, amongst other things, flooding, traffic congestion, trade waste incidents, poor design and inadequate infrastructure including footpaths.
25. The existing situation with the boom gates across the Road is appropriate and satisfactory.
26. The closure of the Road will necessitate upgrade works to other roads at significant cost to the community.
27. The benefit of retaining the Road for the community outweighs any benefit that would result from the Proposal.

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At the time of signing this report, over 170 submissions have been received by the Council in support of the Proposal. A number of these submissions against the Proposal appear to have been prepared using 'template' that is 'pro forma', documents, albeit with slight variations and additional comments amongst them.

A summary of the key themes and issues raised by the submissions in support of the Proposal is set out below.

1. The negative impacts on Shepparton would be dramatic and far reaching if SPCA ceased operations.
2. The closure of the Road will enable SPCA to improve its efficiencies. This is critical to enable SPCA to remain competitive in the global market.
3. The closure of the Road will be of great benefit to SPCA, which will support the future of SPCA and the wider community.
4. The traffic impacts of closing the Road can be managed safely and appropriately.
5. The current situation with the boom gates is not ideal and potentially unsafe.
6. The closure of the Road will help to protect permanent and seasonal employment.
7. Any disadvantage to a few trades in the immediate vicinity of the Road will be outweighed by the benefits brought about by a strong SPCA.
8. The closure of the Road will secure medium term prosperity for over 560 businesses and up to 3,000 employees, which is important for the wider community and regional area.

Special Committee Procedure

Local Law No. 2, *Processes of Local Government (Meetings and Common Seal)*, regulates the procedure of any meeting and any reporting to be carried out by the Special Committee.

The Special Committee should:

1. consider all written submissions provided and
2. consider all verbal submissions at the meeting of the Special Committee.

Report of the Special Committee

The Special Committee must provide a report on its proceedings, including a summary of hearings and recommendation, to the Council.

Any report of the Special Committee will be included in the agenda for the next convenient meeting of the Council.

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Shepparton [continued]

Dated: 23 May 2014



Gavin Cator
Chief Executive Officer

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Shepparton [continued]

Attachments

- Attachment A: Title layout plan of that part of Andrew Fairley Avenue proposed to be discontinued and sold (“**Road**”)
- Attachment B: Aerial photograph of the Road and its surrounds
- Attachment C: First Public Notice
- Attachment D: Second Public Notice
- Attachment E: Copy of ‘standard’ letter initially sent to submitters
- Attachment F: Copy of three alternative ‘standard’ letters sent to submitters
- Attachment G: Summary of submissions
- Attachment H: Copy of submissions [hard copy only]