

2. JUBILEE STREET

Officer responsible Facility Assets Manager	Author Victoria Murdoch, DDI 941-8053
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The purpose of this report is to seek the Council's approval to dispose of land surplus to roading requirements.

CONTEXT OF THE REPORT

In the early 1970s the Council provided a designation within the Operative District Scheme, which would enable a new roading connection to be created from a Garlands Road extension through to Jubilee Street.

Since this time the affected property in the area has been acquired and the road works have since been completed. Council staff are now working through the process of disposing of the surplus land resulting from this work.

This report specifically relates to that portion of land comprising Section 1 (refer attached plan) and its disposal options including the offer back requirements under Section 40 of the Public Works Act 1981.

A DESCRIPTION OF THE PROPOSAL

In accordance with the Council's Property Decision Making Flowchart, Council units have been notified that this site may potentially be surplus. No units of the Council have expressed interest in utilising the site for any purpose.

The portion of land known as Section 1 (and shown on the attached plan) was formed through the development of the Garlands Road extension and involves the amalgamation of three previous properties being part of the land in Certificates of Titles 704/34 (the Well Dunn land), 3B/1370 (the Mitchell land) and 530/114 (the Thomas land). To the street frontage a link strip has been created to limit the access point to the site, meaning that only one lot can be created.

The first two areas of land, the Well Dunn land and the Mitchell land, are very small, 80m² and 120m² respectively, and would result in non-complying lots for which individual separate titles could not be created. The Thomas land being in the middle of the block now surplus to roading requirements is of a reasonable size and therefore with the inclusion of the Well Dunn land and the Mitchell land would create a complying lot.

Staff have obtained a legal opinion on the Public Works Act issues as they relate to these parcels of land and on the basis of this advice the Council is required to offer back that part of Section 1 that was previously part of the Certificate of Title 530/114 (the Thomas land), as required by the Public Works Act 1981.

The legal opinion also suggests that the offer back of the Thomas land should be made conditional that if Mr Thomas takes up the offer he will also have to purchase the Mitchell land and the Well Dunn land. It should be made clear in this offer to Mr Thomas that although the Mitchell and Well Dunn land do not make up part of the statutory offer back they have been included for practical reasons. If the offer back is not accepted then we must consider the disposal options available to the Council in relation to the property.

Section 42 of the Public Works Act sets out the method by which surplus land is to be disposed of when the offer back is not accepted. This section provides:

Where:

- a) any offer to sell land under Section 40(2) of this act has not been accepted within 40 working days or such further period as the local authority considers reasonable; or*
- b) any land is no longer required for a public work and subsections (2) and (4) of Section 40 of this act do not apply, - the local authority may*
- c) cause the land to be offered for sale to the owner of the adjacent land at a fixed price by a registered valuer; or*
- d) cause the land to be offered for sale by public auction, public tender, private treaty; or by public acceptance at a specified price.*

Although under c) and d) the Council is provided with the statutory powers to elect the method of disposal, this is in contrast with the Council policy which states as indicated above that surplus property should be tendered unless there is a clear reason to do otherwise.

Brian Ford, the adjoining owner, has been in discussion with Councillors regarding his interest in purchasing the land. A sale to Mr Ford could be possible as outlined in the legislation but goes against Council policy which does not allow the Council to deal unilaterally with any potential purchaser, unless there is a good reason to do so.

Council staff note that if the property is tendered in accordance with the policy then Mr Ford would still have an opportunity to purchase the land.

SUMMARY

The extension of Garlands Road/Jubilee Street has been completed and Council staff are working to tidy up the resulting areas of the surplus land, which exist from the roading development.

Section 1 has been created from the residual areas of acquiring three Certificates of Title with two of the areas being acquired being very small and not forming conforming lots in their own right. Therefore it is proposed that these two small triangular lots are amalgamated with the middle portion of the site and that this area in its entirety is offered back as required by Section 40 of the Public Works Act 1981.

A legal opinion has been obtained, which concludes that the Council is required to offer at market value this portion of land to Rex Harold Thomas as successor under the will of Clarence Seaton Thomas. If this offer back is not accepted then the land is to be disposed of as outlined above.

- Recommendation:**
1. That the land shown as Section 1 be declared surplus to the Council's requirements.
 2. That an offer back in relation to those parts of Section 1 which were previously part of the land in Certificate of Titles 704/34 (the Well Dunn land) and 3B/1370 (the Mitchell land) not be undertaken as it would be impractical, unreasonable or unfair under Section 40(2)(a) Public Works Act 1981.
 3. That the land shown as Section 1 be offered to Rex Harold Thomas as successor under the will of Clarence Seaton Thomas at an amount assessed by a Council appointed independent registered valuer, in accordance with Section 40 of the Public Works Act, with Mr Thomas being given 40 working days to accept the offer.
 4. That in the event of Mr Thomas not exercising his option to purchase the property, then it be sold on the open market by public tender in accordance with Council policy.
 5. That the Facility Assets Manager be delegated authority to conclude the sale of this property at no less than 90% of the independent registered valuation.