

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 25 June 2019
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.3
Originating Officer: Ashley Curtis, Manager Civil Services
Responsible Director: Peter Bice, Director Infrastructure & Operations
Subject: Land Acquisition - Lower Hermitage Road
For: Decision

1. Land Acquisition – Lower Hermitage Road – 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:

- CEO, Andrew Aitken
- Director Infrastructure & Operations, Peter Bice
- Director Development & Regulatory Services, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community Capacity, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Manager Civil Services, Ashley Curtis
- Governance & Risk Coordinator, Steven Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 19.3: (*Land Acquisition – Lower Hermitage Road*) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3) (d) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is 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/agency/business who supplied the information by disclosing specific quotes and modelling by the tenderer.

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

2. Land Acquisition – Lower Hermitage Road – Confidential Item

SUMMARY

The purpose of this report is to obtain a resolution to undertake a road widening process to widen the road verge along a section of Lower Hermitage Road, Lower Hermitage.

This roadwork and drainage project has previously been approved by Council, and agreement has been reached with three of the four affected property owners to acquire a portion of their land to facilitate these works. However, one land owner has declined Council's offer of \$10,400 and has countered with an offer of \$20/m², which equates to \$12,223.12.

The adjoining land owners' land is identified as Allotment 7 in Deposited Plan No. 20141 contained in Certificate of Title Volume 5102 Folio 497 and known as 579D Lower Hermitage Road, Lower Hermitage (**Appendix 1**).

The land owners are agreeable to the road widening proposal.

RECOMMENDATION

Council resolves:

1. That the report be received and noted
2. To purchase the area of land being 611.156 m² identified in red on the Land Acquisition Plan attached as **Appendix 2** ("land") from Anthony James Holland and Janice Irene Holland the land owners at 579D Lower Hermitage Road, Lower Hermitage, for the requested price of \$20/m² i.e. \$12,223.12 (ex GST) plus all reasonable costs to vest the Land as public road.
3. That the Mayor and CEO be authorised to sign all necessary documentation, including affixing the common seal, to give effect this resolution.

1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal	Organisational Sustainability
Strategy	Risk & Responsibility

Ensuring Council's road land and infrastructure is either located on Council owned or controlled land or secured by some other form of legal tenure is essential for appropriate risk management of Council infrastructure and community safety.

➤ Legal Implications

The road widening process required to effect the purchase of the Land and the vesting of the Land as public road is undertaken by a land division process under the provisions of Section 2231f of the *Real Property Act 1886*.

➤ **Risk Management Implications**

The purchase of the land will:

Provide a safer road for the community, together with reducing the risk of damaging privately owned land and infrastructure.

Inherent Risk	Residual Risk	Target Risk
Medium (1A)	Low (1E)	Low (1E)

➤ **Financial and Resource Implications**

The process of negotiation and completion of the road widening is undertaken within existing resource allocations. The project was successful in receiving Federal Government funding of \$355,000 via the Special Local Roads Program, which can include the cost of the necessary land acquisitions.

➤ **Customer Service and Community/Cultural Implications**

The road re-alignment will improve the safety to all users of Lower Hermitage Road.

➤ **Environmental Implications**

The removal of 12 trees is required as part of the widening works. Conditional approval has been received from the Native Vegetation Council for these removals and a Significant Environmental Benefit Offset Management Plan has been developed to offset the removals.

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

Consultation on the development of this report was as follows:

<i>Council Committees:</i>	Not Applicable
<i>Council Workshops:</i>	Not Applicable
<i>Advisory Groups:</i>	Not Applicable
<i>Administration:</i>	Director Infrastructure & Operations Manager Civil Services Civil Projects Coordinator Technical Officer Manager Property Services
<i>Community:</i>	Discussions with land owner

2. BACKGROUND

At the 26 March 2019 Council meeting, Council received a report detailing the land acquisitions required to facilitate the Lower Hermitage Road Widening Project. At that meeting, Council resolved as follows:

Moved Cr Malcolm Herrmann
S/- Cr Linda Green

80/19

Council resolves:

1. That the report be received and noted
2. To purchase the area of land being 481.718 sqm identified in red on the Land Acquisition Plan attached as Appendix 2 (“land”) from Dean Roger Cottle the land owner at 579A Lower Hermitage Road, Lower Hermitage, and to negotiate a purchase price of up to \$7,000 (excl GST) plus all reasonable costs to vest the Land as public road.
3. To purchase the area of land being 817.138sqm, identified in red on the Land Acquisition Plan attached as Appendix 2 (“land”), from Carissa Ann Courtney & David Ian Courtney, the land owners of the land at 579B Lower Hermitage Road, Lower Hermitage, and to negotiate a purchase price of up to \$12,000 (excl GST) plus all reasonable costs to vest the Land as public road.
4. To purchase the area of land being 888.686sqm, identified in red on the Land Acquisition Plan attached as Appendix 2 (“land”), from Peter Ronald Browning and Alison Rosemary Browning, the land owners at 579C Lower Hermitage Road, Lower Hermitage, and to negotiate a purchase price of up to \$13,000 (excl GST) plus all reasonable costs to vest the Land as public road.
5. To purchase the area of land being 725.619sqm, identified in red on the Land Acquisition Plan attached as Appendix 2 (“land”), from Anthony James Holland and Janice Irene Holland, the land owners at 579D Lower Hermitage Road, Lower Hermitage, and to negotiate a purchase price of up to \$10,500 (excl GST) plus all reasonable costs to vest the Land as public road.
6. That the Mayor and CEO be authorised to sign all necessary documentation, including affixing the common seal, to give effect this resolution.

Carried Unanimously

Subsequent to this resolution, Council staff made offers within delegation to affected land owners. Owners Cottle, Courtney, and Browning accepted Council’s offer, signing an Authority and Agreement to undertake Boundary Realignment form.

Mr and Mrs Holland however declined Council’s offer, and countered with an offer of \$20/m².

3. ANALYSIS

As advised in a report to Council on 26 March 2019, McLean Gladstone Valuers were engaged to prepare a report based on the areas of land to be acquired to undertake the road widening project. Using a direct comparison method of valuation, it was determined that the value of land at 579D Lower Hermitage Road was \$9,430.

In the event that the land owners were not agreeable to the amounts offered as per the recommendations from the valuation report, Council allowed for the negotiation of a small buffer to the valuation amount of no more than 12.5%. This resulted in a maximum purchase price for the subject land of \$10,500. Ultimately Council staff offer \$10,400, which was rejected by Mr and Mrs Holland.

Mr and Mrs Holland countered with an offer of \$20/m². Originally, it was proposed to acquire 725.619 m² of land from 579D Lower Hermitage Road, however upon review it was determined that a lesser area of 611.156 m² could be acquired whilst still meeting all design criteria. This results in a requested purchase price of \$12,223.12.

The requested purchase price is \$2,793.12 more than the land valuation, and \$1,823.12 more than the amount offered.

As private negotiations with Mr and Mrs Holland have thus far been unsuccessful, compulsory acquisition can be considered. This approach requires Council to pay extensive legal fees that could cost in excess of \$10,000 in addition to the total purchase price for the land of approximately \$7,945.

If the land was to be compulsorily acquired, the process could take over twelve months to be completed. Works on the land can occur prior to the land acquisition being completed, however Mr and Mrs Holland have a number of avenues by which to object to the process. At a minimum these can delay works on the subject land by several months. Council will incur additional costs if the contractor has to come back to complete the work at the subject land at a later date.

4. OPTIONS

Council has the following options:

- I. Resolve to make an agreement with the land owners to purchase the Land and vest as Public Road in accordance with the recommendation (Recommended)
- II. Resolve not to purchase the Land and vest as Public Road which would result in the likelihood of additional damage to privately owned land by slippages of the road verge (Not Recommended)
- III. Compulsorily acquire the land (not recommended).

5. APPENDICES

- (1) Identification Plan of road area subject to widening
- (2) Land Acquisition Plan

Appendix 1

Identification of area subject to Road Widening

**579D Lower Hermitage Rd,
Lower Hermitage**
Acquiring 611.156m²
Value of area: \$7,945.00
(@\$13/m²)
Owner: AJ & J Holland

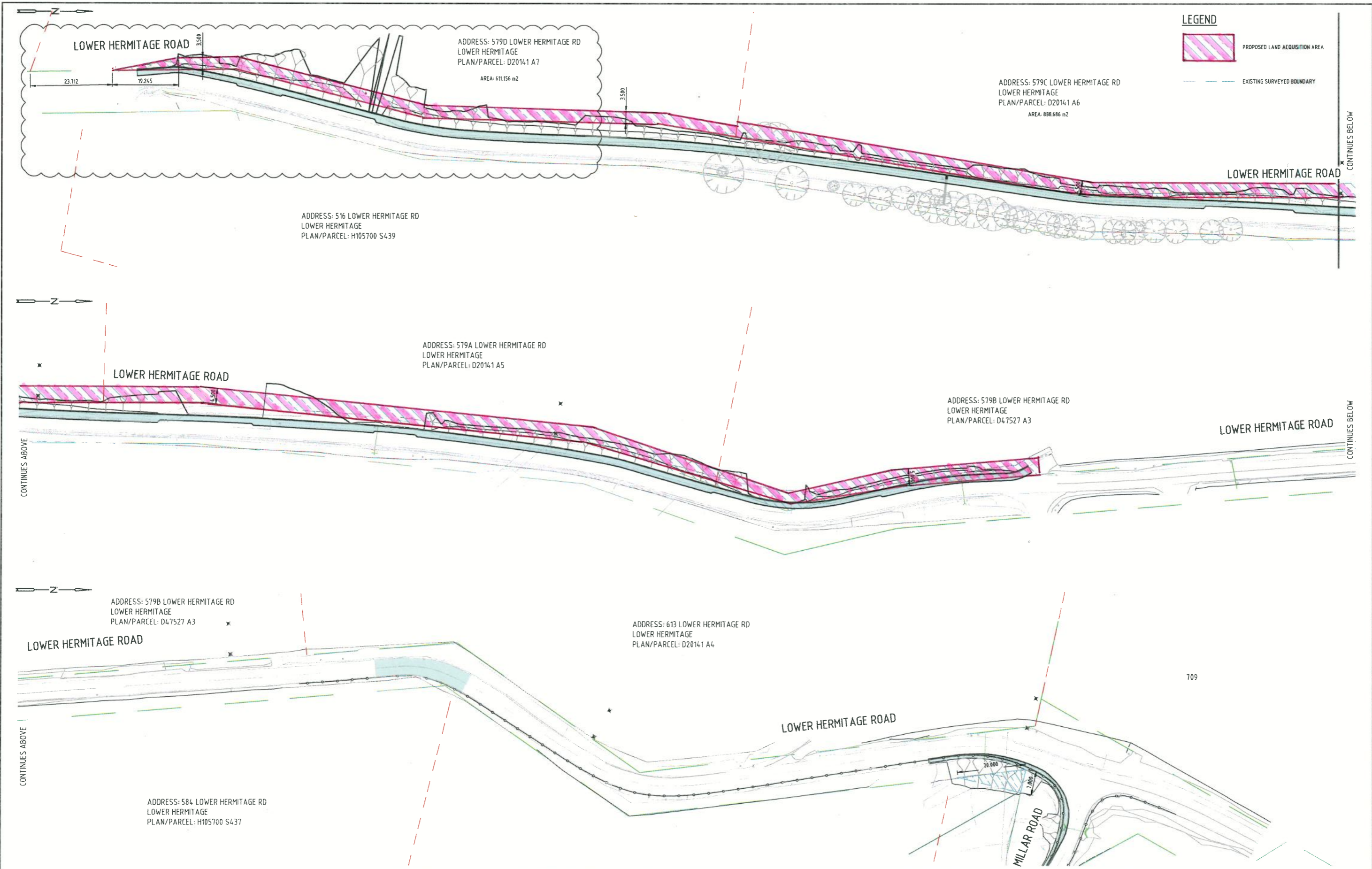


Extent of Works

Google

Appendix 2

Land Acquisition Plan



REV	DESCRIPTION	DATE	INIT	APP
5	ISSUED FOR CONSTRUCTION	23/05/2019	JDN	JZ
4	REMOVED DCDB BOUNDARY FOR CLARRITY	09/04/2019	JDN	JZ
3	ADJUSTED PROPOSED LAND ACQUISITION BOUNDARY FOR LOT 579D	26/03/2019	JDN	JZ
2	UPDATED SURVEY, ADDITIONAL TREES TO BE REMOVED	12/03/2019	JDN	JZ
1	ISSUED FOR TENDER	14/02/2019	JDN	JZ
0	ISSUED FOR TENDER	04/02/2019	JDN	JZ

ISSUED FOR CONSTRUCTION



FMG Engineering
 PO Box 707 Kent Town SA 5071
 42 Fullarton Rd Nonwood SA 5057
 P 08 8363 0222 F 08 8363 1555
 fmgengineering.com.au ABN 56 083 071 185

CLIENT: Adelaide Hills Council
 PROJECT TITLE: LOWER HERMITAGE ROAD UPGRADE
 SITE ADDRESS: Lower Hermitage Road, LOWER HERMITAGE, SA 5131

DESIGNED: JDN
 DRAWN: JDN
 CHECKED: VB
 NO. OF SHEETS: 19
 SCALE: 1:500 @ A1
 DATE STARTED: 30.01.18
 SITE ID & 200 No: S38400-256896
 DRAWING TITLE: LAND ACQUISITION PLAN - SHEET 1 OF 1

DESIGNED	JDN	DRAWN	JDN
CHECKED	VB	NO. OF SHEETS	19
SCALE	1:500 @ A1	DATE STARTED	30.01.18
SITE ID & 200 No	S38400-256896	REV	
DRAWING No.	C019		5

3. Land Acquisition – Lower Hermitage Road – Period of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council’s decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 19.3 in confidence under sections 90(2) and 90(3) (d) of the *Local Government Act 1999*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until the completion of the contract, but no longer than 12 months.

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.