

Item 5.

Revocation of Road Widening Order - 142 Carillon Avenue, Newtown

File No: S115468

Summary

142 Carillon Avenue, Newtown is owned by Affordable Habitats Pty Ltd (Affordable Habitats). The land is subject to a Road Widening Order notified in the Government Gazette dated 25 March 1927 Folio 15890.

On 10 November 2017, the Land and Environment Court issued a judgment/order in respect of proceedings between the City and Affordable Habitats, approving Development Application D/2016/1759. This development application related to the demolition of the existing commercial building and construction of a four storey student accommodation building and associated landscaping works on the land. D/2016/1759 - Part A itemises the deferred commencement conditions, which are required to be satisfied prior to the consent becoming operative.

Condition 1 of Part A of the deferred commencement conditions requires the Road Widening Order to be revoked by 10 November 2019.

This report recommends that Council resolve to revoke the Road Widening Order that relates to the property at 142 Carillon Avenue, Newtown because it is no longer required by Council.

Recommendation

It is resolved that:

- (A) Council approve the revocation of the Road Widening Order on 142 Carillon Avenue Newtown (also known as Lot 1 in DP 732639); and
- (B) authority be delegated to the Chief Executive Officer to enter into all necessary documentation required to facilitate the revocation of the Road Widening Order on 142 Carillon Avenue, Newtown.

Attachments

Attachment A. Deposited Plan 732639

Background

1. 142 Carillion Avenue Newtown, (also known as Lot 1 in DP 732639) (Property), is owned by Affordable Habitats Pty Ltd (Affordable Habitats).
2. The Property is subject to a Road Widening Order, which was notified in the Government Gazette dated 25 March 1927 Folio 15890 (Gazettal Notice). Pursuant to this Gazettal Notice, certain public streets were to be realigned under the Public Roads Act 1902, including part of the road adjacent to the Property (part Church Street, which was formerly known as Layton Street).
3. The plan relating to the Property shows the location of the re-alignment, affecting a strip of land on the western side of the Property. A copy of deposited plan 732639 is attached to this report at Attachment A. The area that is the subject of the Road Widening Order is marked with an (X) on the plan.
4. In May 2017, Affordable Habitats submitted Development Application D/2016/1759 to the City, seeking approval for the demolition of the existing commercial building and construction of a four storey student accommodation building and associated landscaping works on the subject land, including on the land that is the subject of the Road Widening Order.
5. On 10 November 2017, the Land and Environment Court issued a judgment/order in respect of proceedings between the City and Affordable Habitats, approving Development Application D/2016/1759.
6. The conditions of consent issued by the Land and Environment Court include deferred commencement conditions, which are required to be satisfied within 24 months of the date of development consent. One of the deferred commencement conditions requires Council to revoke the Road Widening Order.
7. City staff have reviewed the proposal to revoke the Road Widening Order, and do not have any objection to granting the revocation. This is because the Gazettal Notice in March 1927 was prepared in the past tense, suggesting that the realignment had already been completed at the time the Gazettal Notice was published. Further, neighbouring properties that should also be affected by a similar Road Widening Order are not subject to the same Road Widening Order. There is no use for Council to retain the Road Widening Order over a single property in isolation.
8. In order to satisfy its conditions of consent, Affordable Habitats has requested a letter from Council confirming that the Road Widening Order is no longer required by Council.

Key Implications

Organisational Impact

9. There are no organisational impacts for Council in granting consent to revocation of the Road Widening Order.

Risks

10. There are currently no plans to widen Carillion Avenue. Because the Road Widening Order only affects one property in isolation, there are no risk implications for Council in granting consent to the revocation of the Road Widening Order.

Budget Implications

11. There are no budget implications for Council in relation to this report.

Relevant Legislation

12. Roads Act 1993. Section 27 of the Roads Act provides that a roads authority may revoke a road widening order by order published in the Gazette.
13. Local Government Act 1993. Section 377(1)(h) requires Council to resolve to surrender any land or other property. Because of the nature of Council's interest in the land, this section of the Local Government Act applies.

Critical Dates / Time Frames

14. The deferred commencement conditions must be satisfied within 24 months of the date of the determination of D/2016/1759, which is 10 November 2019.

Options

15. Council could refuse to revoke the Road Widening Order. This option is not recommended because Council staff have confirmed that the Road Widening Order is no longer required. Further, if the Road Widening Order is not revoked then Council will not be complying with the judgment/orders of the Land and Environment Court.

Public Consultation

16. No public consultation is required in order to revoke the Road Widening Order.

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Director City Projects and Property

Lesley Nash, Solicitor