

UNCONFIRMED MINUTES

FOR THE
GREATER SHEPPARTON CITY COUNCIL

SPECIAL COUNCIL MEETING

HELD ON
TUESDAY 10 JUNE, 2014
AT 5.30PM

IN THE EASTBANK AUDITORIUM

COUNCILLORS:

Cr Jenny Houlihan (Mayor)
Cr Dennis Patterson (Deputy Mayor)
Cr Les Oroszvary
Cr Michael Polan
Cr Kevin Ryan
Cr Fern Summer

VISION

GREATER SHEPPARTON
AS THE FOOD BOWL OF AUSTRALIA,
A SUSTAINABLE, INNOVATIVE
AND DIVERSE COMMUNITY
GREATER FUTURE

**UNCONFIRMED MINUTES
FOR THE
SPECIAL COUNCIL MEETING
HELD ON
TUESDAY 10 JUNE, 2014 AT 5.30PM**

**CHAIR
CR JENNY HOULIHAN**

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RISK LEVEL MATRIX LEGEND

Note: A number of reports in this agenda include a section on “risk management implications”. The following table shows the legend to the codes used in the reports.

Likelihood	Consequences				
	Negligible (5)	Minor (4)	Moderate (3)	Major (2)	Catastrophic (1)
Almost Certain (A) Event expected to occur several times per year (i.e. Weekly)	Low	Moderate	High	Extreme	Extreme
Likely (B) Will probably occur at some stage based on evidence of previous incidents (i.e. Monthly)	Low	Moderate	Moderate	High	Extreme
Possible (C) Not generally expected to occur but may under specific circumstances (i.e. Yearly)	Low	Low	Moderate	High	High
Unlikely (D) Conceivable but not likely to occur under normal operations (i.e. 5-10 year period)	Insignificant	Low	Moderate	Moderate	High
Rare (E) Only ever occurs under exceptional circumstances (i.e. +10 years)	Insignificant	Insignificant	Low	Moderate	High

Extreme CEO’s attention immediately required. Possibly avoid undertaking the activity OR implement new controls

High Director’s attention required. Consider suspending or ending activity OR implement additional controls

Moderate Manager’s attention required. Ensure that controls are in place and operating and management responsibility is agreed

Low Operational, manage through usual procedures and accountabilities

Insignificant Operational, add treatments where appropriate

PRESENT: Councillors Jenny Houlihan, Dennis Patterson, Les Oroszvary, Michael Polan, Kevin Ryan and Fern Summer.

**OFFICERS: Gavin Cator – Chief Executive Officer
Steve Bowmaker – Director Infrastructure
Johann Rajaratnam – Director Sustainable Development
Rosanne Kava – Acting Director Business
Kaye Thomson – Director Community
Rebecca Bertone – Official Minute Taker
Sharlene Still – Deputy Minute Taker**

1. ACKNOWLEDGEMENT

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors.”

2. APOLOGIES

Nil.

3. DECLARATIONS OF CONFLICT OF INTEREST

In accordance with sections 77A, 77B, 78 and 79 of the *Local Government Act 1989* Councillors are required to disclose a “conflict of interest” in a decision if they would receive, or could reasonably be perceived as receiving a direct or indirect financial or non-financial benefit or detriment (other than as a voter, resident or ratepayer) from the decision.

Disclosure must occur immediately before the matter is considered or discussed.

4. PROCEDURAL MATTERS

The following procedural matters require consideration by Council.

1. Variation of time for provision to Councillors of agenda of special council meeting. (clause 19.1 of Local Law No.2)
2. Addition of an agenda item, namely, adoption of the report on the proceedings of the Special Committee established to hear submissions, under section 223 of the *Local Government Act 1989*, on the proposal to discontinue and sell part of Andrew Fairley Avenue, Shepparton. (section 84(4) *Local Government Act 1989*)

4. PROCEDURAL MATTERS

Moved by Cr Polan
Seconded by Cr Patterson

That the Council unanimously resolves to:

1. Accept the provision, to Councillors, of the meeting agenda less than two business days before the meeting;
2. Add an additional agenda item for consideration for adoption at the Special Council Meeting, namely, the report on the proceedings of the Special Committee established to hear submissions, under section 223 of the *Local Government Act 1989*, on the proposal to discontinue and sell part of Andrew Fairley Avenue, Shepparton.

CARRIED.

5. SPEAKING TIMES

Moved by Cr Patterson
Seconded by Cr Oroszvary

That the speaking time set out in clause 68 and 69 of the Greater Shepparton City Council Local Law No.2 be extended to 10 minutes, with no extension, for this meeting only to allow all Councillors additional time to address and debate this very important matter.

CARRIED.

6. REPORT FROM SPECIAL COMMITTEE ESTABLISHED TO HEAR SUBMISSIONS ON THE PROPOSED DISCONTINUANCE AND PROPOSED SALE OF PART OF ANDREW FAIRLEY AVENUE, SHEPPARTON

On Tuesday, 18 March 2014, the Council resolved to, amongst other things, establish a Special Committee of the Council to hear submissions, under section 223 of the *Local Government Act 1989* on the proposal to discontinue and sell part of Andrew Fairley Avenue, Shepparton.

On Friday, 30 May 2014 the Special Committee adopted a report on the proceedings of the Special Committee.

**Moved by Cr Oroszvary
Seconded by Cr Ryan**

That the Council adopt the report, dated 30 May 2014, on the proceedings of the Special Committee established to hear submissions, under section 223 of the *Local Government Act 1989*, on the proposal to discontinue and sell part of Andrew Fairley Avenue, Shepparton.

CARRIED.

Attachments

Report on Proceedings of the Special Committee, Including a Summary of the Hearings Held on Tuesday 27 May 2014 (the Hearing)

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell 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 is a report to the Council on the proposal to discontinue and sell part of Andrew Fairley Avenue, Shepparton (**Proposal**).

The part of Andrew Fairley Avenue, Shepparton subject to the Proposal is approximately 3,963m² in area and shown coloured peach, pink and yellow within the continuous bold black line on the Title Layout Plan (Sheet 1 of 1, Drawing 14054/01 Rev.0) (**Road**) prepared by Chris Smith & Associates, provided at Attachment A.

Throughout this report “**SPCA**” means SPC Ardmona Limited (ACN 059317618), or, SPC Ardmona Operations Limited (ACN 004077105), or, a related company.

The Proposal was requested by SPCA on Friday, 14 February 2014. SPCA has requested that, provided the Council determines to support the Proposal, the Road be sold to SPC Ardmona Operations Limited (ACN 004077105).

On Tuesday, 18 March 2014, the Council resolved to, amongst other things, give public notice of the Proposal and establish a Special Committee to hear submissions on the Proposal under section 223 of the Act.

Two public notices were published. The First Public Notice was published in the Shepparton News on 21 March 2014. The Second Public Notice was published in the Shepparton News on 23 April 2014.

Over 1,300 written submissions were received on the Proposal.

A meeting of the Special Committee was held on Tuesday, 27 May 2014 (**Hearing**) and over 60 people were heard in support of submissions.

On Friday, 30 May 2014 the Special Committee adopted a report on the proceedings of the Special Committee (**Committee Report**). The Committee Report contains a recommendation that, “in making its decision in relation to the Proposal, the Council consider this report on the proceedings of the Special Committee, including the summary of the Hearing and every submission (both written and verbal) received by the Council on the Proposal”.

Council must consider each of the written and verbal submissions received under section 223 of the Act.

Attached to this report is, amongst other things:

- a copy of each written submission received by the Council on the Proposal;
- a separate document which contains a summary of each written submission received by the Council on the Proposal;

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

- the Committee Report;
- a separate document which contains a detailed summary of the Hearing, including detail of individual submitter comments.

A summary of the key themes and issues raised by the written submissions and an outline of the key themes and issues raised in submissions at the Hearing is set out in this report (pages 8 – 13), below.

Information and discussion on a number of relevant considerations is also set out in this report (pages 13 to 27), below.

This report contains alternative recommendations.

Recommendation A is that the Council resolve to abandon the Proposal.

Recommendation B is, essentially, that the Council resolve to discontinue the Road and sell the discontinued Road to SPCA, subject to a number of conditions.

RECOMMENDATION A

That, having considered each of the written and verbal submissions received under section 223 of the *Local Government Act 1989 (Act)*, the Council resolves to abandon this proposal to discontinue and sell the relevant part of Andrew Fairley Avenue, Shepparton.

RECOMMENDATION B

That, having considered each of the written and verbal submissions received under section 223 of the *Local Government Act 1989 (Act)*, the Council:

1. Resolves that the part of Andrew Fairley Avenue that is approximately 3,963m² in area and shown coloured peach, pink and yellow within the continuous bold black line on the Title Layout Plan (Sheet 1 of 1, Drawing 14054/01 Rev.0) (**Road**) prepared by Chris Smith & Associates be discontinued, provided that:
 - 1.1. at the discretion of the Chief Executive Officer (**CEO**), the discontinuance be delayed to a date to be agreed with SPC Ardmona Operations Limited (ACN 004077105) (**SPCAO**), to enable continued public use of the Road unless and until SPCAO is in a position to proceed to make use of the Road; and
 - 1.2. the discontinuance will not affect any right, power or interest held by a service, utility provider or public authority (**Servicing Authority**) in the Road in connection with any sewers, drains, pipes, wires or cables under the control of the Servicing Authority in or near the Road.
2. Directs that, within 3 months of this resolution, a walking and cycling strategy be prepared that provides for effective linkages for pedestrians and cyclists in the vicinity of the Road including for those persons that previously used the Road.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

3. Directs that a plan be prepared by a licensed surveyor which identifies the same Road area, any right, power or interest held by a Servicing Authority in the Road, and satisfies the requirements of the Registrar of Titles for all legal purposes (**Discontinuance Plan**).
4. Directs that a notice, pursuant to the provisions of clause 3(a) of schedule 10 of the Act, including the Discontinuance Plan, be published in the Victoria Government Gazette, to discontinue the Road.
5. Directs that, following the discontinuance of the Road, the discontinued Road be sold to SPCAO subject to contract conditions generally consistent with the proposed conditions set out in the report to Council, dated 10 June 2014.
6. Delegates to and authorises the CEO to negotiate and vary the conditions of the sale of the discontinued Road, provided that the following conditions are non-negotiable:
 - 6.1. the sale price of the Road is \$295,000.00 plus any applicable GST;
 - 6.2. within 90 days of the settlement of any transfer of the discontinued Road from Council to SPCAO, \$1,000,000.00 must be paid, by or on behalf of SPCAO, to the Council to be put towards the cost of local road infrastructure improvements;
 - 6.3. SPCAO must, under the terms of the contract, be required to enter into a deed of agreement with Council, which deed must operate as both a contract and also an agreement pursuant to Division 2 of Part 9 of the *Planning and Environment Act 1987* (**Agreement**);
 - 6.4. the Agreement must be registered on the certificate of title to the Road, and the certificates of title to the land from which SPCAO operates in the locality. This may include any part or all of the land east of the railway bounded by (commencing from the north) Wheeler Street, Old Dookie Road, Lockwood Road and Williams Road (**SPCA Site**) and all owners of the SPCA Site must execute the Agreement;
 - 6.5. the Agreement must require the owners of the SPCA Site, and their successors in title, to, if the receipt, processing, packaging and production of fruit product (**Operations**) ceases on the Road or on the SPCA Site, to transfer the Road back to the Council in its 'original condition' and for the same consideration as Council received for the Road (NB: presently the period of cessation is suggested as 12 months, this period may be varied in negotiation by the CEO).
7. Authorises the CEO to sign any contracts of sale, vendor's statement, or other document required to be signed in connection with the sale of the discontinued Road that does not have to be executed under Council's common seal.
8. Directs that Council's common seal be affixed to the transfer of the discontinued Road and to any other documents that are required to be sealed by Council in connection with the discontinuance and sale of the Road.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

**Moved by Cr Polan
Seconded by Cr Houlihan**

That, having considered each of the written and verbal submissions received under section 223 of the *Local Government Act 1989 (Act)*, the Council:

1. Resolves that the part of Andrew Fairley Avenue that is approximately 3,963m² in area and shown coloured peach, pink and yellow within the continuous bold black line on the Title Layout Plan (Sheet 1 of 1, Drawing 14054/01 Rev.0) (**Road**) prepared by Chris Smith & Associates be discontinued, provided that:
 - 1.1. at the discretion of the Chief Executive Officer (**CEO**), the discontinuance be delayed to a date to be agreed with SPC Ardmona Operations Limited (ACN 004077105) (**SPCAO**), to enable continued public use of the Road unless and until SPCAO is in a position to proceed to make use of the Road; with that date intended to be 31 March 2015, acknowledging that temporary closures of the Road will be required, for work safety and other reasons, from 30 June 2014
 - 1.2. the discontinuance will not affect any right, power or interest held by a service, utility provider or public authority (**Servicing Authority**) in the Road in connection with any sewers, drains, pipes, wires or cables under the control of the Servicing Authority in or near the Road.
2. Directs that, within 3 months of this resolution, a walking and cycling strategy be prepared that provides for effective linkages for pedestrians and cyclists in the vicinity of the Road including for those persons that previously used the Road.
3. Directs that a plan be prepared by a licensed surveyor which identifies the same Road area, any right, power or interest held by a Servicing Authority in the Road, and satisfies the requirements of the Registrar of Titles for all legal purposes (**Discontinuance Plan**).
4. Directs that a notice, pursuant to the provisions of clause 3(a) of schedule 10 of the Act, including the Discontinuance Plan, be published in the Victoria Government Gazette, to discontinue the Road.
5. Directs that, following the discontinuance of the Road, the discontinued Road be sold to SPCAO subject to contract conditions generally consistent with the proposed conditions set out in the report to Council, dated 10 June 2014.
6. Delegates to and authorises the CEO to negotiate and vary the conditions of the sale of the discontinued Road, provided that the following conditions are non-negotiable:
 - 6.1. the sale price of the Road is \$295,000.00 plus any applicable GST;
 - 6.2. within 90 days of the settlement of any transfer of the discontinued Road from Council to SPCAO, \$1,000,000.00 must be paid, by or on behalf of SPCAO, to the Council to be put towards the cost of local road infrastructure improvements;

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

- 6.3. SPCAO must, under the terms of the contract, be required to enter into a deed of agreement with Council, which deed must operate as both a contract and also an agreement pursuant to Division 2 of Part 9 of the *Planning and Environment Act 1987* (**Agreement**);
- 6.4. the Agreement must be registered on the certificate of title to the Road, and the certificates of title to the land from which SPCAO operates in the locality. This may include any part or all of the land east of the railway bounded by (commencing from the north) Wheeler Street, Old Dookie Road, Lockwood Road and Williams Road (**SPCA Site**) and all owners of the SPCA Site must execute the Agreement;
- 6.5. the Agreement must require the owners of the SPCA Site, and their successors in title, to, if the receipt, processing, packaging and production of fruit product (**Operations**) ceases on the Road or on the SPCA Site, to transfer the Road back to the Council in its 'original condition' and for the same consideration as Council received for the Road (NB: presently the period of cessation is suggested as 12 months, this period may be varied in negotiation by the CEO).
7. Authorises the CEO to sign any contracts of sale, vendor's statement, or other document required to be signed in connection with the sale of the discontinued Road that does not have to be executed under Council's common seal.
8. Directs that Council's common seal be affixed to the transfer of the discontinued Road and to any other documents that are required to be sealed by Council in connection with the discontinuance and sale of the Road.

Cr Houlihan vacated the Chair at 5.35pm in order to second the motion.

Cr Patterson assumed the Chair at 5.35pm.

Cr Houlihan resumed the Chair at 5.35pm.

The motion was lost.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Proposal

The Proposal is to discontinue and sell the Road.

As the Proposal is not to discontinue and retain the Road, it is not an option for the Council, as part of this Proposal, to discontinue and retain the discontinued Road.

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 Greater 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.”*

Additional detail about the Proposal, including a concept plan and discussion of the proposed Road closure and warehouse extension is contained at page 10 of the report prepared by Aurecon Australia Pty Ltd, dated 21 April 2014, provided at Attachment B.

SPCA

SPC Ardmona Limited (ACN 059317618) was formerly known as S.P.C. Limited, and, S.P.C. Holdings Limited.

The ultimate holding company of SPC Ardmona Limited (ACN 059317618) is, currently, Coca-Cola Amatil Limited.

SPC Ardmona Operations Limited (ACN 004077105) is a related, operational company which is the registered proprietor of land adjoining the Road.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

SPC Ardmona Operations Limited (ACN 004077105) was formerly known as S.P.C. Operations Limited, S.P.C. Limited, Shepparton Preserving Company Limited, and, The Shepparton Fruit Preserving Company Limited.

The Road

The Road is approximately 3,963m² in area and shown coloured peach, pink and yellow within the continuous bold black line on the Title Layout Plan (Sheet 1 of 1, Drawing 14054/01 Rev.0) prepared by Chris Smith & Associates, provided at Attachment A.

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

The Road is registered on the Council's Register of Public Roads, with road number R902001, road section R902001/1.

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

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*

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

- (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*
- (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.

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 D. The First Public Notice provided that the closing date for submissions was Monday, 21 April 2014.

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 E. The Second Public Notice provided that the closing date for submissions was at midnight on Thursday, 22

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

May 2014. The Second Public Notice also gave notice of the Special Committee Hearing 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 Hearing 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 F.

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, in which case the letter contained acknowledgement of the submission and notification of the Hearing;
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 G.

Special Committee of the Council

On Tuesday, 18 March 2014, the Council resolved to, amongst other things, establish a Special Committee to hear submissions on the Proposal under section 223 of the Act.

On 23 May 2014, the CEO of the Council provided a report to the Special Committee. A copy of that report is provided at Attachment H.

The Special Committee held its Hearing on Tuesday, 27 May 2014.

The Committee Report was adopted by the Special Committee on Friday, 30 May 2014 and contains the following recommendation:

- "That, in making its decision in relation to the Proposal, the Council consider the report on the proceedings of the Special Committee, including the summary of the Hearing and every submission (both written and verbal) received by the Council on the Proposal."

A copy of the Committee Report is provided at Attachment I.

Written Submissions

At the time of signing this report, over 1,300 written submissions have been received by the Council, including a number of petitions.

A copy of each written submission received by the Council on the Proposal is provided at Attachment J. A copy of each submission is also available for inspection at the Council offices during normal business hours.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

A separate document which contains a summary of each written submission received by the Council on the Proposal is provided at Attachment K.

Noteably:

- many submitters put in multiple submissions, and there may be some duplicates. Therefore, any reference to the number of submissions does not equate to the number of submitters; and
- a number of submissions appear to have been prepared using 'template', that is 'pro forma', documents, albeit with slight variations and additional comments amongst them.

The written submissions can generally be divided into two categories, namely:

- submissions against the Proposal;
- submissions in support of the Proposal.

Written submissions against the Proposal

At the time of signing this report, over 1,000 written submissions have been received by the Council against the Proposal.

A summary of the key themes and issues raised by the written 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.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

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.
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.

7. OFFICE OF THE CHIEF EXECUTIVE OFFICER

7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

27. The benefit of retaining the Road for the community outweighs any benefit that would result from the Proposal.
28. Persons other than SPCA are interested in purchasing the Road.
29. An individual submitter (a paramedic) (refer to submission 8.49) objected to the closure of the Road citing his belief that the closure of the Road will have a detriment on emergency response times of at least 2 minutes, and that emergency services require the Road to access existing and future development.

Written submission in support of the Proposal

At the time of signing this report, over 170 submissions have been received by the Council in support of the Proposal.

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.
9. Alternative design options, such as conveying fruit over or under the Road, or constructing a vehicle overpass are not viable.
10. Having multiple sites is not an option for SPCA, and Shepparton is the most appropriate site for the consolidation of SPCA's operations.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Hearing of submissions

The Hearing of the Special Committee was held on Tuesday, 27 May 2014, and over 60 people were heard in support of submissions.

The Committee Report includes a summary of the Hearing.

A separate document which contains a detailed summary of the Hearing, including detail of individual submitter comments, is provided at Attachment L.

Verbal submissions against the Proposal

An outline of the key themes and issues raised by the submissions presented at the Hearing opposed to the Proposal is set out below.

1. The 1996 proposal was rejected for sound reasons and was a very wise decision with the benefit of hindsight.
2. There is significant community opposition to the Proposal. The Road provides important access for 8,000 vehicles per day.
3. The Road is an important east-west link for Shepparton and the community reasonably requires the Road to stay open for use. It is more efficient and convenient to use the Road compared to alternative routes.
4. The closure of the Road will be inconvenient for, and increase safety risk to, pedestrians including school children.
5. The closure of the Road will increase costs, potentially significantly, for businesses and residents. At a minimum these costs will be as a result of the additional travel time and distance required and the associated costs including additional fuel costs. There will also be loss of potential business, including due to the proposed clearways and loss of passing trade to local businesses.
6. The closure of the Road will cause delay to emergency services and will increase congestion on other roads.
7. Alternative routes are not safe and can be prone to issues, including traffic congestion, heavy vehicles and flooding.
8. The Council process in relation to the Proposal has been problematic and biased towards SPCA. The timeframes have been unrealistic and there has been a lack of due process. The process, and the Proposal, is legally defective, unlawful and invalid. The Proposal should be abandoned.
9. Council appears to have predetermined the decision on the Proposal. Council must bring an open mind and consider all submissions.
10. SPCA has been provided an unfair advantage in the way that it has been able to put its case compared to the residents and ratepayers.
11. The Proposal has already and, if approved, will further decrease land values and decrease the value and viability of existing businesses in the area.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

12. The Road closure will stifle current and future economic development in Shepparton, especially on land to the east. The long term cost of the Road closure will outweigh any benefits. Shepparton will grow and prosper provided the Road is kept open.
13. The interests of the ratepayers and the community should be paramount to the interests of SPCA, which is a private, profit driven company.
14. The traffic report is not comprehensive and there is insufficient information for the Council to make a fully informed decision. No cost benefit or risk analysis has been prepared to enable the Council to understand the consequences of the proposed Road closure.
15. The economic prosperity of SPCA is not a relevant consideration for the Council to take into account when determining whether to discontinue the Road. The Council should consider whether the Road is reasonably required for public use and, if so, then the Council should not close the Road.
16. The closure of the Road will bring more heavy vehicles into Shepparton, which is inconsistent with Council policies. SPCA should consolidate its operations at another site, possibly at Ardmona.
17. There are alternative options for SPCA which have not been properly considered. Council should help SPCA but not by selling the Road. SPCA could make its operations more efficient in other ways, including through innovative engineering solutions that are not dependent on closing the Road.
18. The Proposal is not truly economic if the costs of the consequential road upgrade works is accounted for. The developer pays principle should apply to SPCA. This is a grab for financial advantage by SPCA. SPCA cannot guarantee it will be viable in the medium to long term.
19. There is no guarantee as to who will pay for the road upgrade works that will be required to the surrounding road network if the Road is closed. The Council should not pay for such works if the Road is closed. There is also no guarantee as to the timing of the road upgrade works. These works should be required prior to the Road closure, if the Proposal is approved.
20. SPCA is not as important for Shepparton as many believe. It is a foreign owned private company and there are other sectors, businesses and employers that are more important for the future of Shepparton.
21. Council should listen to the community and represent the ratepayers. SPCA should fix its own inefficiencies and problems. SPCA is affected by complex issues and the proposed Road closure will not save SPCA.
22. The Road closure will be permanent and SPCA will never return the Road to the community.
23. Persons other than SPCA are interested in purchasing the Road.
24. There are a number of important utility services, including high voltage power cables and water mains going over or under the Road.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Verbal submissions in support of the Proposal

An outline of the key themes and issues raised by the submissions presented at the Hearing in support of the Proposal is set out below.

1. SPCA suffered some difficult trading over the last couple of years and its turnaround involves efficiency improvement and innovation. The Road closure would enable improved efficiencies to be realised.
2. The economic impacts of not proceeding with the Proposal would be significant. The benefits will outweigh any negative impacts. A “no” decision would have a long legacy for Shepparton with jobs at stake, both directly and indirectly.
3. Any consequential traffic impacts would be manageable.
4. Three primary concerns are considered to be:
 - a. traffic congestion, which will be lessened by changing shift times at SPCA;
 - b. fairness, which will be achieved by returning the Road to Council if SPCA ever stops business; and
 - c. safety, which will be improved especially for pedestrians if the Road is closed.
5. The Council's decision must be that Shepparton is open for business. SPCA supports over 560 local businesses and 3,500 employees both directly and indirectly in the Goulburn Valley.
6. If SPCA is not put 'back on track', the CEO admitted that Coca Cola Amatil is under huge stress and pressure.
7. Local businesses will survive even if the Road is closed. Businesses affected will continue to be successful through competitive prices and services.
8. Shepparton is the most suitable place to consolidate SPCA's operations. SPCA has made no secret of this.
9. It is unusual and dangerous to have the Road run through the SPCA workplace. Cars and pedestrians are a constant hazard for forklift drivers using the boom gates. The Proposal will improve safety for all concerned.

Use of the Road

The Road is currently used both by the public and by SPCA for its private purposes.

A number of the submissions (both written and verbal) suggest that the Road should not or cannot be discontinued by the Council because the Road is reasonably required for public use.

The current use of the Road is a relevant consideration for the Council in making its decision on the Proposal. However, there is no statutory requirement under the Act or the *Road Management Act 2004* that requires that the Road must not be reasonably required for public use, before the Road can be discontinued by the Council.

The relevant powers of the Council to discontinue the Road have been set out in this report, above (page 5). In particular, 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.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Clause 3(a) of schedule 10 provides that the Council can discontinue a road, or part of a road, by a notice published in the Victoria Government Gazette. There is no requirement in clause 3(a) of schedule 10 of the Act that the Road be not required for public use before it can be discontinued.

It is noted that under section 528(2)(a) of the former *Local Government Act 1958*, it was only if a road (not being a road set out on land of the Crown) or any part thereof was not reasonably required for public use that the Governor in Council, on request of the municipal Council, could direct that such road be discontinued. However, such a requirement does not exist in the current Act.

Alternative routes

The local street network in the vicinity of the Road does not form a conventional 'grid' pattern and if the Road is discontinued, there are a number of potential alternative route combinations that will be available.

The attractiveness of each particular alternative route combination depends on the precise details of the particular journey taken including the timing of the journey and the location of the departure and destination.

If the Road is discontinued, alternative routes to get from the intersection of Knight Street, Railway Parade and Hawdon Street to the intersection of Lockwood Road and Old Dookie Road will be likely to be:

Railway Parade, Fryers Street, Williams Road, Lockwood Road;

Railway Parade, Fryers Street, Archer Street, Byass Street, Lockwood Road; and

Hawdon Street, New Dookie Road; Wheeler Street; Old Dookie Road.

Each of these alternative route combinations is longer in terms of physical distance (approximately 1.7km, 1.7km and 2.5km respectively) and would take more time.

Traffic analysis

Traffic analysis on the proposed closure of the Road, was obtained from TrafficWorks Pty Ltd, final report dated 5 May 2014 (**Traffic Report**).

A copy of the Traffic Report is provided at Attachment M.

A summary of sections of the Traffic Report is set out below.

Existing conditions

The Road is aligned in a north-west to south-east direction, and is a two lane, two-way road. The Road provides connection between Railway Parade / Hawdon Street / Knight Street to the north-west, and Old Dookie Road / Lockwood Road to the south-east. The Road has a pavement width of approximately 11m in a 20m road reservation. Kerbside parking is not permitted.

The Road bisects the SPCA factory site in Shepparton. The urban default speed limit of 50km/h applies to the Road.

The intersection of the Road and Railway Parade / Hawdon Street / Knight Street is a roundabout. The intersection of the Road and Old Dookie Road / Lockwood Road is also a roundabout. There is a railway level crossing on the Road immediately east of the

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Railway Parade / Hawdon Street / Knight Street roundabout. The railway line at this point is a single railway line, and is located north of the Shepparton Railway Station which is the northern limit of the rail service from Melbourne. The railway line has limited use at this point.

Traffic signals are located approximately half-way along the Road, to stop through traffic on the Road to allow vehicles to cross the road between the two sections of the SPCA site.

Traffic volumes

Traffic counts undertaken in March 2014 by Greater Shepparton City Council indicate the typical weekday traffic volume on the Road is 8,000 vehicles per day (vpd).

Surveys undertaken during the Easter school holiday period in 2014 indicated this volume reduced to approximately 7,100vpd during school holidays.

Traffic redistribution

The proposed closure of the Road will result in the redistribution of 8,000vpd on a typical weekday. A detailed breakdown of that redistribution is provided in the Traffic Report (pages 5 – 8).

Roadway capacities

The theoretical daily capacity of many of the collector streets in the area surrounding the Road is 18,000vpd. These include: Hawdon Street; New Dookie Road; Old Dookie Road; Railway Parade; Fryers Street; and, Archer Street.

The theoretical capacity of many of the collector streets in the area surrounding the Road is 12,000vpd. These include: Lockwood Road; Mitchell Street; Florence Street; and, Wheeler Street.

It may become necessary to introduce clearway conditions along Mitchell Street, Florence Street and Wheeler Street to improve flow.

The post closure – 10 years estimate for Lockwood Road indicates that it will be approaching its theoretical capacity at that stage and will need parking restrictions to maintain acceptable flow conditions.

Pedestrians and Cyclists

The closure of the Road will result in the Road being closed to pedestrians and cyclists, including those accessing the schools and sports precinct to the west of the Road.

The results of a peak period pedestrian and cyclist survey undertaken for the Road on 22 April 2014 are provided in the Traffic Report (page 9).

In total, there were 38 pedestrians observed using the Road between 7am and 9.30am, and 29 pedestrians observed using the Road between 3pm and 7pm.

In the morning peak period, between 7.00 and 9.30am, it was observed that no cyclists used the Road. In total, there were 7 cyclists observed using the Road between 3pm and 7pm.

Traffic analysis

Traffic analysis, including intersection analysis, is set out in the Traffic Report (pages 10 to16). A summary of traffic analysis is set out below.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Fryers Street and Railway Parade key observations:

- the intersection currently operates satisfactorily during the AM and PM peak periods;
- the intersection is expected to continue to operate satisfactorily following the closure of the Road;
- the 10 year sensitivity analysis indicates the intersection is expected to continue to operate satisfactorily for 10 years into the future following the closure of the Road, and in fact the intersection operation will not be significantly worse than if the Road remains open to traffic.

Fryers Street and Thompson Street key observations:

- the existing intersection currently operates satisfactorily during the AM and PM peak periods with good operating conditions, minimum delays and queue lengths;
- analysing the existing intersection immediately after the closure of the Road, the increase in traffic along Fryers Street will result in the saturation of intersection during the PM peak with lengthy delays experienced along Thompson Street;
- the results for the alternative intersection treatment shows that immediately after the closure of the Road and 10 years into the future, the level of service of the intersection will be satisfactory, however queuing along the west approach (Fryers Street) is expected to extend across the railway crossing and into the Railway Parade roundabout;
- it is recommended that a linked network assessment of the Fryers Street / Thompson Street intersection, the railway level crossing and the Railway Parade / Fryers Street roundabout be conducted (SIDRA network model or micro simulation);
- the results indicate that the current intersection layout could cope with future traffic growth for at least 10 years if Andrew Fairley Avenue remains open.

New Dookie Road and Wheeler Street key observations:

- the intersection currently operates satisfactorily during the AM and PM peak periods;
- the intersection is expected to continue to operate satisfactorily following the closure of the Road;
- the 10 year sensitivity analysis indicates the intersection is expected to continue to operate satisfactorily for 10 years into the future whether the Road is closed or remains open.

Old Dookie Road and Wheeler Street key observations:

- the intersection currently operates satisfactorily during the AM and PM peak periods;
- the intersection is expected to continue to operate satisfactorily following the closure of the Road;

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

- the 10 year sensitivity analysis indicates the intersection is expected to continue to operate satisfactorily for 10 years into the future whether the Road is closed or remains open.

Lockwood Road and Midland Highway key observations:

- the analysis shows that the existing intersection has an average level of service during the AM and PM peaks with moderate delays and queuing along the north-west approach (Midland Highway);
- subsequent to the closure of the Road, it is expected that the level of service will decrease marginally during the AM and PM peaks, with only slight increases to the delays and queue lengths as a result of the additional traffic;
- the 10 year sensitivity analysis indicates the intersection is expected to continue to operate satisfactorily with 10 years traffic growth if the Road remains open, but with poor operating conditions if the Road is closed.

Hawdon Street / New Dookie Road / Balaclava Road / Verney Road key observations:

- the analysis shows that the existing intersection operates satisfactorily during the morning peak period, but has very poor operating conditions in the evening peak period, with extensive queues on all approaches, in particular the eastern approach;
- the intersection will require capacity improvements if Andrew Fairley Avenue is closed;
- adding channelised left-turn slip lanes on the northern and western approaches will marginally improve the intersection performance, but it will still have poor operating conditions in the evening peak period (there is insufficient space to provide left-turn slip lanes on the other approaches without land acquisition);
- converting the existing roundabout to a signalised intersection, the operating conditions in the evening peak period are greatly improved, however the spatial constraints may limit the ability to construct sufficient traffic lanes for this intersection design (refer to the SIDRA intersection layout in Attachment C of the Traffic Report).

Conclusions on traffic analysis

Analysis indicates that following the closure of the Road, the surrounding roads will continue to operate within their theoretical roadway capacities. The sensitivity analysis of 10 years traffic growth indicates that Lockwood Road will be approaching its theoretical capacity at that stage. This road becomes a key access route to SPCA and will require early implementation of parking controls to maintain acceptable flow characteristics. It may also become necessary to consider introduction of clearway conditions in Mitchell, Florence and Wheeler Streets.

Pedestrians and cyclists using the Road as a thoroughfare to the schools and sports precinct will need to use other routes, potentially Fryers Street / Thompson Street, if the Road is closed.

An alternative intersection layout was investigated for the intersection of Fryers Street / Thompson Street to determine the likely performance of a modified T-intersection layout.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

The alternate intersection layout would operate satisfactorily following the closure of the Road, however, queuing on the north-west approach of Fryers Street would likely extend across the railway line and into the Railway Parade roundabout. A network model (SIDRA network or micro simulation) of the Thompson Street / Fryers Street, railway level crossing and Fryers Street / Railway Parade intersections is required to better inform the optimal intersection layout at this location. The intersection would operate satisfactorily in its current layout with future traffic growth for at least 10 years if the Road remains open.

Capacity improvements are required now at the Hawdon Street / New Dookie Road / Balaclava Road / Verney Road roundabout and become more time critical if the Road is closed to vehicular traffic. Addition of left-turn slip lanes on the northern and western approaches to the roundabout was analysed and indicates this would be insufficient to accommodate post closure Road traffic conditions. Conversion of the roundabout to traffic signals will greatly improve the intersection operation in the evening peak period if the required number of lanes can be accommodated within the space available.

The 10 year sensitivity analysis indicates the intersection of Midland Highway and Lockwood Road is expected to continue to operate satisfactorily with 10 years traffic growth if the Road remains open, but with poor operating conditions if the Road is closed, and so capacity improvements will be required at the intersection at this stage.

Cost estimate of road and intersection improvements

Council engineers have developed an estimate of the costs of a number of road and intersection improvements, including a number of improvements arising from the analysis contained in the Traffic Report.

The road and intersection improvements have been classified as being high priority works or moderate priority works. The total cost estimate of the road and intersection improvements is \$3,303,905.00.

High priority works

A copy of table prepared by Council engineers showing cost estimates for the high priority works is provided at Attachment N.

The high priority items are, as follows:

- replace roundabout with traffic signals at Fryers Street / Railway Parade intersection;
- straighten Fryers Street over the railway line and install traffic signals at Fryers Street / Thompson Street intersection;
- replace roundabout with traffic signals at Hawdon Street / New Dookie Road / Balaclava Road / Verney Road intersection;
- introduce clearway restrictions along Lockwood Road, Mitchell Street, Florence Street, and Wheeler Street; and
- block off access to the Road and construct curb and install signage at either end of the Road.

The estimated cost of the high priority works is \$2,489,835.00.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Moderate priority works

A copy of table prepared by Council engineers showing cost estimates for the moderate priority works is provided at Attachment O.

The moderate priority items are, as follows:

- install new traffic signals at New Dookie Road / Wheeler Street intersection;
- install traffic signals linked at Old Dookie Road / Mitchell Street that are linked with Old Dookie Road / Wheeler Street traffic signals;
- land acquisition and widening of road pavement at Lockwood Road / Midland Highway for left hand turning; and
- land acquisition and widening of road pavement at Old Dookie Road / Lockwood Road for left hand turning.

The estimated cost of the moderate priority works is \$814,070.00.

Pedestrian and cycle use

Pedestrians and cyclists using the Road as a thoroughfare, including to the schools and sports precinct, will need to use other routes if the Road is closed. As the likely alternative routes are longer in distance, this will be likely to be inconvenient for pedestrians and cyclists that use the Road, causing these pedestrians and cyclists delay amongst other things.

Trucks and heavy vehicles

A number of submissions suggest that approval of the Proposal will increase the number of trucks and heavy vehicles.

Table 2 on page 10 of the Aurecon Australia Pty Ltd report, dated 21 April 2014, provided at Attachment B is set out below. Table 2 shows existing and proposed estimates of SPCA movements across the Road.

Product Type	Vehicle	Existing	Future
Fresh fruit (apples, peaches, pears etc.)	Tractor with fruit bins	100 per day	170 per day
Tomatoes	Up to 19m Semi-trailer	N/A	Up to 32 per day
Bulk non-canning fruit	Up to 19m Semi-trailer	N/A	4-12 per day

On the basis of Table 2, if the proposed estimates are realised, it appears that the approval of the Proposal will result additional vehicles, possibly including an additional 44 semi trailers per day.

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Potential impact on land values and local businesses

A number of submissions suggested that surrounding land values and local businesses will be detrimentally affected if the Proposal is approved by Council.

It is uncertain how, in particular, surrounding land values and local businesses may or may not be impacted.

Emergency services

A number of submissions suggest that emergency services may experience longer response times by having to use alternative, more congested routes in the absence of the Road.

For incidents in the immediate vicinity of the Road, it appears this suggestion may have some validity.

A submission was received (refer to submission 19.70) that states that the members of the Shepparton Police have expressed their significant concerns for public safety if the Road is discontinued and believe closure of the Road will create problems preventing an expedient route to the industrial and residential areas in the immediate vicinity of the Road.

A submission was received (refer to submission 19.34) that states that the members of the Shepparton Fire Brigade voted to object to the closure of the Road. The submission cites extreme concern that the closure of the Road will adversely affect the ability to arrive at incidents in a timely manner to protect lives and properties. The submission suggests that the Road is used by the Shepparton Fire Brigade to attend to emergency incidents and any delay in reaching such incidents could be the difference between life, death, quality of life or loss of home/livelihood for those involved.

There was no submission from the Country Fire Authority.

Alternative sites or design options for SPCA

A number of submissions suggest that there are alternative options, such as consolidating SPCA's operations at another site, or conveying fruit over or under the Road, or constructing a vehicle overpass.

In its written submission (refer to submission 19.25), SPCA suggests, amongst other things, that:

alternative design options, such as conveying fruit over or under the Road, or constructing a vehicle overpass are not viable alternatives; and

Shepparton is the most appropriate site for the consolidation of SPCA's operations, and it is not a solution for SPCA to have multiple sites.

Further information about some alternative design options that SPCA suggests are not feasible is set out in section 3.2.3 (page 11) of the Aurecon Australia Pty Ltd report, dated 21 April 2014, provided at Attachment B.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Economic impact of the potential withdrawal of SPCA from the Greater Shepparton region

An assessment of the economic impact of the potential withdrawal of SPCA from the Greater Shepparton region was carried out and a report was prepared by Essential Economics Pty Ltd, dated June 2013. A copy of that report is provided at Attachment P.

The key findings of that report are set out below.

Key findings

SPCA is one of Greater Shepparton's largest and most established operators and an important presence in Victoria's Food Bowl. SPCA continues to play a vital role in the Goulburn Valley economy through direct employment at its sites, significant production of major food brands, its many supply contracts to fruit growers and other businesses, and sunk investment in its facilities across the region.

While SPCA remains a strong manufacturing presence in the Goulburn Valley Region, the scale of operations has been reduced significantly over recent years.

Key factors behind this contraction include drought, the strong and sustained appreciation of the Australian dollar, increased imports of cheaper product (especially by major supermarket chains), and a loss of export market share.

Due to these challenging commercial conditions, SPCA has incurred significant stock write-offs in recent years and has responded to falling demand levels by downgrading one of its major processing plants (Mooroopna) and significantly reducing its fruit intake levels from regional fruit growers.

If SPCA was to withdraw from Greater Shepparton (and the surrounding region), the following economic impacts are estimated:

- Job losses of 1,000 Full Time Equivalent (**FTE**) positions, including 360 FTE jobs at SPCA facilities and 640 FTE jobs in supporting sectors (agriculture, transport and logistics, retail etc) through the employment multiplier effect (industrial and consumption). Additionally, the 1,050 casual seasonal positions will be lost.
- Increase in the unemployment rates for Greater Shepparton from its current level of 8.6% to 11.0% and the Goulburn Valley region from its current level of 7.1% to 7.4% (assuming these jobs are not immediately replaced). In a state-wide context, the existing unemployment rates for Greater Shepparton (8.6%) and Moira (6.3%) are well above the unemployment rates for Regional Victoria (5.7%), Metropolitan Melbourne (5.4%) and Victoria (5.5%).
- Reduction in industry training opportunities – such as SPCA's induction-to-leadership training program.
- Reduction in regional economic output of \$165 million pa, including \$105 million associated with SPCA suppliers (560 businesses, including 230 fruit growers and pack houses) and \$50 million in other spending in the economy through the multiplier effect. This level of contraction represents 5% of the annual Gross Regional Product for the affected parts of the Goulburn Valley region (mainly the municipalities of Greater Shepparton and Moira), with up to 6% of all businesses likely to be adversely impacted directly, and many more impacted indirectly.

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- Reduced viability for proposed major infrastructure projects such as the Shepparton Bypass and Goulburn Valley Link Freight Node which are premised on sustaining and growing regional industrial output and freight volumes.
- Reduction in construction Investment, noting that SPCA has invested significantly in the region over the years, including \$25 million in its National Distribution Centre and its Mooroopna plant. These two projects alone are estimated to have generated 200 FTE construction-related jobs.
- Reduced Council rates revenue of \$700,000 pa, which represents approximately 15% of all annual industrial rates revenue to Greater Shepparton Council.
- Reduced community donations of \$65,000 pa, as well as loss of direct food donations to local schools and community organisations.
- Increase in vacant industrial land supplies by 36ha which will raise Greater Shepparton's already high vacancy rate to approximately 40%, creating a significant surplus of industrial land which may negatively impact on property and land values, and compromise Council's long-term strategic planning for new industrial nodes.

Potential sale of the Road

The original request by SPCA was for Council to discontinue the Road and "grant" the discontinued Road to SPCA.

If the Council determines to discontinue the Road, pursuant to clause 3 of schedule 10 of the Act, it is open to Council to sell the discontinued Road to SPCA.

Given the potential that the Council may determine to discontinue and sell the discontinued Road to SPCA, a valuation of the Road has been obtained from Goulburn Valley Property Services, dated 22 May 2014 (**Valuation**). A copy of the Valuation is provided at Attachment Q.

Subject to the assumptions, limitations and warranties set out in the Valuation, the market value (excluding GST) of the Road has been valued as \$295,000.00.

It is noted that, if the Council determines to support the Proposal, Council:

- is under no obligation to price the Road on the basis of the Valuation, that is the market value of the Road;
- is entitled to negotiate a sale price for the Road that is higher or lower than the market value of the Road.

Given the potential that the Council may determine to discontinue and sell the Road to SPCA, consideration has been given to potential conditions of sale. It is emphasised that these potential conditions of sale have not yet been agreed with SPCA. That could not occur until Council has decided on the Proposal. The draft, potential conditions of sale have been provided to SPCA as draft, potential conditions. Therefore, the draft conditions may be subject to amendment and variation.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Potential conditions of sale

The draft, potential conditions of sale are set out below.

1. Agreed price

\$295,000.00, plus any applicable GST. This figure is based on the Valuation. The Council will consider the request to “grant” the Road to SPCA, however, the market value amount is clearly a possible decision the Council may take.

2. Contribution to other road improvements

Payment in the amount of \$1,000,000 within 90 days of the settlement of any transfer of the Road to SPCA. This amount to be put towards the cost of the improvements to local road infrastructure that must be made, in part arising from the closure of the Road.

3. Date for discontinuance and sale

It is uncertain when SPCA may require access to the Road. To allow other road improvements to be commenced before the discontinuance occurs, a condition of sale should address the timing of any discontinuance and transfer.

4. Utilities

SPCA should be responsible for liaising with all utility providers that have infrastructure that may be affected by the Road, discontinuance, its physical closure and transfer.

This should include contractual conditions requiring SPCA to meet the requirements of such utility providers, including (but not limited to) Goulburn Valley Water, gas services, electricity, telecommunications and the like.

Satisfactory evidence that such arrangements either have been achieved or can be achieved (to the satisfaction of the Council) should be required as a precondition to settlement of the potential sale.

5. Road Land not consolidated

Unless it is a legal requirement of any necessary planning permit or building permission, the Road should not be consolidated with, or the subject of any subdivision with, the SPCA Site.

6. Approvals

SPCA should be responsible for all planning and building and all other approvals for its project intentions.

7. Purchaser

SPC Ardmona Operations Limited (ACN 004077105), however, the relevant entity will need to be confirmed with SPCA.

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8. Costs of process

SPCA should meet the reasonable costs of the Council in completing the discontinuance process, including legal and titles office costs necessary to create a title for the purposes of transfer.

If a plan of consolidation (with adjoining land) is required then SPCA should be required to also meet those costs.

9. Form of document

It will not be necessary to prepare a formal contract of sale of real estate and/or vendor's statement.

The relevant contract will, however, need to be in writing and will need to be a deed and should include provisions such that it will also be pursuant to section 173 of the *Planning and Environment Act 1987*. Notably, section 173 agreements must now be recorded on title.

10. Works

SPCA should be solely responsible for all works necessary to effectively separate the Road from its connections. Precisely what this may include is unclear but elements such as:

- future fencing requirements;
- curbing and other road works at its eastern and western ends where it interferes with other roads and the railway;
- removal and/or modification of public lighting (poles etc);
- other as required,

may be required to the Council's satisfaction.

11. Obligation to transfer the Road back to Council

Any proposed contract should include a condition to the following effect:

SPCA will, in the contract, agree to:

11.1. Enter into a deed of agreement which will operate as both an enforceable contract and also be for the purposes of section 173 of the *Planning and Environment Act 1987* ("**Proposed Agreement**"). The parties to the Proposed Agreement must include the owner(s) of the SPCA Site and Road Land (both defined below) and it must be registered on the title(s) for the SPCA Site and the Road Land once created.

11.2. Key definitions for the Proposed Agreement will include:

"**SPCA Site**" means all of the land from which SPCA operates in the locality (title details will be required). This

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will mean all land east of the railway bounded by (commencing from the north) Wheeler Street, Old Dookie Road, Lockwood Road and Williams Road.

“**Operations**” means the use of the SPCA Site for the receipt, processing, packaging and production of fruit product and for the avoidance of doubt:

- Operations does not include the use of the Road Land for the mere storage of plant and equipment, other materials or product;
- will not exclude the potential transfer of the SPCA Site or business to a potential purchaser (“**Purchaser**”) provided that Purchaser:
 - continues to conduct the Operations at the SPCA Site, including the Road Land;
 - accepts in writing that the Agreement is binding on the Purchaser, either via its registration on title as a section 173 agreement or (upon Council request) by novation of that Proposed Agreement.

“**Road Land**” means that part of Andrew Fairley Avenue which has been discontinued and is the subject of the sale to SPCA.

11.3. Agreement that SPCA or the land owner will not build a structure or building on the Road Land, other than for its intended purpose of transferring product between factory and storage areas which may include new concrete or paving works.

11.4. In the event that :

- 11.4.1. the Road Land is not used for the Operations for a period of greater than 12 months; or
- 11.4.2. the SPCA Site ceased to be used for the Operations, for a period of greater than 12 months,

the owner(s) of the SPCA Site must, at the Council’s option, re-transfer the Road Land freed and discharged from all mortgages and all encumbrances except those encumbrances which the owner took title subject to from the Council.

11.5. Any re-transfer will be for the same consideration as SPCA paid for the Road Land.

11.6. SPCA shall pay all costs and legal expenses (including stamp duty if any) in connection with the re-transfer of the Road Land to the Council including costs of any necessary subdivision of the land to give effect to the re-transfer of the Road Land.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

- 11.7. If the Road Land has been consolidated with any other part of the SPCA Site, then, as a precondition to the re-transfer of the Road Land, SPCA must procure subdivision of that land and the creation of a separate title for the Road Land.
- 11.8. SPCA shall effect the re-transfer of the Road Land within 60 days of the notification by the Council to SPCA that the Council requires the re-transfer of the Road Land in accordance with paragraph 11.4, provided that if a subdivision of that land is required, then SPCA must effect that subdivision with all expedition and the re-transfer must occur within 14 days of the registration of any necessary plan of subdivision to re-create Road Land as a separate title.
- 11.9. SPCA (or the owner(s) of the SPCA Site) must, within 60 days of the notification of Council of the requirement for re-transfer commence and thereafter complete works on the Road Land and its immediate surrounds to return the Road Land as nearly as possible to its former condition as a road, including as required:
- removal and/or relocation of fencing;
 - road surface works;
 - works to curb and channel;
 - public lighting;
 - footpaths; and
 - works as required by utility providers.
- 11.10. For the purpose of giving full force and effect to this clause, SPCA hereby irrevocably appoints the Chief Executive Officer, from time to time, of the Council as the Attorney of SPCA to do all things necessary including complete, execute and deliver all of the documents necessary for re-transfer to the Council the Road Land for which the Council lawfully requires SPCA to re-transfer pursuant to this clause. Further, SPCA hereby agrees to ratify and does hereby ratify all acts and things done by the Council pursuant to the power of attorney hereby granted.

If the Council resolves to proceed with the Proposal, draft Resolution B has included, for the CEO, a level of delegation, however, together with some “non-negotiable” conditions.

As with the decision on the Proposal itself, the content of the suggested conditions and the “non-negotiable” conditions is a matter for Council to decide.

Other matters

A letter in relation to the Proposal, dated 4 June 2014, was received by Council’s CEO from Mr Peter Ryan MP, the Deputy Premier, Minister for State Development and Minister for Regional and Rural Development. A copy of that letter is provided at Attachment R. Amongst other things, that letter confirms that the Victorian Government will consider a funding request from Council towards the required road works associated with the Proposal.

A letter in relation to the Proposal, dated 3 June 2014, was received by Council’s CEO from Mr Peter Kelly, of SPCA. A copy of that letter is provided at Attachment S. That letter explains that SPCA agrees to contribute \$1,000,000.00 towards road works associated with the Proposal.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

Conclusions and recommendations

There are a number of arguments both for and against the Proposal. There are many issues involved in this decision. The Council must consider all the relevant considerations.

The main argument in support of the Proposal is likely to be the economic ramifications for Greater Shepparton if SPCA ceases its operations and withdraws from the Greater Shepparton region. This argument is related to the direct and indirect economic importance of SPCA to the Greater Shepparton region.

There are other arguments in support of the Proposal, including that the current situation is unsafe given the conflict between the private use of the Road by SPCA and the public use of the Road, including by pedestrians and cyclists.

SPCA has submitted that other design options and other sites are commercially or technically unviable.

It is not known what the refusal of the Proposal would mean for SPCA and its operations in the short, medium or long term.

It has not been explicitly stated that if the Road is not incorporated into SPCA's operations, that SPCA's operations at Shepparton will cease. That is the strong suggestion or implication, however, and it appears reasonable to assume that the refusal of the Proposal will at least make SPCA's future operations more difficult and less viable.

SPCA has suggested that approval of the proposal would create \$100 million stimulus for the region by allowing SPCA's existing operations to continue and grow.

There are a number of arguments against the Proposal. The main argument against the Proposal is likely to be that the Road is an important east-west connection for Shepparton that is currently used by approximately 8,000 vehicles per day and that the discontinuance of the Road will delay emergency services, which could be the difference between life, death, quality of life or loss of home/livelihood for those involved.

A further main argument is that the discontinuance of the Road will, based on the Traffic Report, result in the congestion of other parts of the road network in the vicinity of the Road. Council engineers have estimated the associated road improvements and upgrades and associated expenditure, at over \$3.3 Million.

Other arguments against the Proposal include that it will bring more trucks and heavy vehicles into the centre of Shepparton, it will significantly inconvenience Road users including pedestrians and cyclists, and that it may be detrimental to the value of surrounding land and businesses.

There are a number of potential impacts that the discontinuance and sale of the Road may cause. Some of these impacts may be positive for the public or for certain private persons. Some of these impacts may be negative for the public or for certain private persons.

It is difficult to compare the various arguments in terms of the appropriate weight to give them. However, that is ultimately the task for the Council.

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

In coming to its decision, the Council must ensure that it considers each of the written and verbal submissions and the Committee Report received under section 223 of the Act, this report, and all other relevant considerations.

This report contains alternative recommendations.

Recommendation A is that the Council resolve to abandon the Proposal.

Recommendation B is, essentially, that the Council resolve to discontinue the Road and sell the discontinued Road to SPCA, subject to a number of conditions.

Dated: 6 June 2014



Gavin Cator
Chief Executive Officer

Attachments

1. Attachment A - Title Layout Plan (Sheet 1 of 1, Drawing 14054/01 Rev.0)
Prepared by Chris Smith and Associates
2. Attachment B - Report prepared by Aurecon Australia Pty Ltd, dated 21 April 2014
3. Attachment C - Aerial Photograph of the Road and its Surrounds
4. Attachment D - First Public Notice
5. Attachment E - Second Public Notice
6. Attachment F - Copy of 'Standard' Letter Initially Sent to Submitters
7. Attachment G - Copy of Three Alternative 'Standard' Letters Sent to Submitters
8. Attachment H - CEO Report to the Special Committee, Dated 23 May 2014
9. Attachment I - Special Committee Report to Council, Dated 30 May 2014
10. Attachment J - Copy of Each Written Submission Received by the Council on the Proposal
11. Attachment K - Summary of Written Submissions
12. Attachment L - Summary of the Hearing (Including Detail of Individual Submitter Comments) of the Special Committee held on Tuesday 27 May 2014
13. Attachment M - Traffic Analysis on the Proposed Closure of the Road, Prepared by TrafficWorks Pty Ltd, Final Report Dated 5 May 2014
14. Attachment N - Table Prepared by Council Engineers Showing Cost Estimates for the High Priority Works
15. Attachment O - Table Prepared by Council Engineers Showing Cost Estimates for the Moderate Priority Works
16. Attachment P - Assessment of the Economic Impact of the Potential Withdrawal of SPCA from the Greater Shepparton Region, Prepared by Essential Economics Pty Ltd, Dated June 2013
17. Attachment Q - Valuation of the Road Prepared by Goulburn Valley Property Services, Dated 22 May 2014

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7.1 Proposal to Discontinue and Sell Part of Andrew Fairley Avenue, Shepparton (continued)

18. Attachment R - Letter From Mr Peter Ryan MP, the Deputy Premier, Minister for State Development and Minister for Regional and Rural Development to Council's CEO, Dated 4 June 2014
19. Attachment S - Letter From Mr Peter Kelly, of SPCA to Council's CEO, Dated 3 June 2014

Moved by Cr Polan Seconded by Cr Patterson

1. That, having considered each of the written and verbal submissions received under section 223 of the *Local Government Act 1989 (Act)*, the Council resolves to abandon this proposal to discontinue and sell the relevant part of Andrew Fairley Avenue, Shepparton.
2. That Council offers its full support to SPCA to examine all possible alternatives to enable the proposed redevelopment of the Shepparton plant to be undertaken.

CARRIED.

MEETING CLOSED AT 6.36PM